United Nations

Report of the International Civil Service Commission for the year 1997

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Supplement No. 30 (A/52/30)

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ABBREVIATIONS

ACABQ	Advisory Committee on Administrative and Budgetary Questions
ACC	Administrative Committee on Coordination
ACPAQ	Advisory Committee on Post Adjustment Questions
CCAQ	Consultative Committee on Administrative Questions
CCISUA	Coordinating Committee for International Staff Unions and Associations of the United Nations System
FAO	Food and Agriculture Organization of the United Nations
FICSA	Federation of International Civil Servants' Associations
IAEA	International Atomic Energy Agency
ICAO	International Civil Aviation Organization
ICSC	International Civil Service Commission
IFAD	International Fund for Agricultural Development
ILO	International Labour Organization
IMO	International Maritime Organization
ITU	International Telecommunication Union
JIU	Joint Inspection Unit
UNDP	United Nations Development Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFPA	United Nations Population Fund
UNHCR	Office of the United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNIDO	United Nations Industrial Development Organization
UNJSPB	United Nations Joint Staff Pension Board
UNJSPF	United Nations Joint Staff Pension Fund
UNRWA	United Nations Relief and Works Agency for Palestine Refugees in the Near East
UPU	Universal Postal Union
WFP	World Food Programme
WHO	World Health Organization
WIPO	World Intellectual Property Organization
WMO	World Meteorological Organization
WTO	World Trade Organization

GLOSSARY OF TECHNICAL TERMS

Base/floor salary scale	For the Professional and higher categories of staff, a universally applicable salary scale is used in conjunction with the post adjustment system. The minimum net amounts received by staff members around the world equal those shown in this scale.
Benchmark	Context: Job classification. A description of typical duties and responsibilities of an occupation found at a particular grade level that is used in establishing the classification of posts.
Best practice	An innovative policy, strategy, programme, process or practice that has a demonstrated positive impact upon performance, is currently being used by at least one major employer and is relevant and applicable to others.
Broadbanding	Also called pay banding. Reduction of the overall number of grade levels within wider pay ranges (bands).
Ceiling on the education grant	Under normal circumstances, the maximum education grant (ceiling) equals 75 per cent of maximum admissible expenditures. The ceiling on the education grant for disabled children equals 100 per cent of the maximum admissible expenditures.
Comparator	Salaries and other conditions of employment of staff in the Professional and higher categories are determined in accordance with the Noblemaire principle by reference to those applicable in the civil service of the country with the highest pay levels. The United States federal civil service has been used as the comparator since the inception of the United Nations.
Consolidation of post adjustment	The base/floor salary scale for the Professional and higher categories is adjusted periodically to reflect increases in the comparator salary scale. This upward adjustment is made by taking a fixed amount of post adjustment and incorporating or "consolidating" it in the base/floor salary scale. If the scale is increased by consolidating 5 per cent of post adjustment, the post adjustment classifications at all duty stations are then reduced by 5 per cent, thus ensuring, generally, no losses or gains to staff.

Cost-of-living differential	In net remuneration margin calculations, the remuneration of United Nations officials from the Professional and higher categories in New York is compared with their counterparts in the comparator service in Washington, D.C. As part of that comparison, the difference in cost of living between New York and Washington is applied to the comparator salaries to determine their "real value" in New York. The cost-of-living differential between New York and Washington is also taken into account in comparing pensionable remuneration amounts applicable to the two groups of staff mentioned above.
Dependency rate salaries	Net salaries determined for staff with a primary dependant.
Dominance	Context: Weighted average salaries. When the weighted average of a number of salaries is significantly influenced by a particular weight, the average is said to be "dominated" by the salary amount related to that weight.
Education grant	An education grant is available to internationally recruited staff members serving outside their home country to cover a part of the cost of educating children in full-time attendance at an educational institution.
Extrapolation	A technique used to estimate values beyond the range of values in a series.
Federal Employees' Pay Comparability Act (FEPCA)	The Federal Employees' Pay Comparability Act (1990), passed by the United States Congress, whereby the pay of federal civil service employees would be brought to within 5 per cent of non-federal-sector comparator pay over a period of time.
Flemming principle	The basis used for the determination of conditions of service of the General Service and other locally recruited categories of staff. Under the application of the Flemming principle, General Service conditions of employment are based on best prevailing local conditions.
Grade equivalencies	A comparison of United Nations system grades P-1 to D-2 with the corresponding grades in the comparator service is carried out by the Commission once every five years. The results of those comparisons provide an indication of the comparator grade(s) that are equivalent in terms of job content to a particular United Nations grade.

Hard currency duty stations	Duty stations with fully convertible currencies.
Headquarters locations	Headquarters of the organizations participating in the United Nations common system are: Geneva, London, Montreal, New York, Paris, Rome and Vienna. While the Universal Postal Union (UPU) is headquartered at Berne, post adjustment and General Service salaries at Geneva are used for Berne.
Highest-paid civil service	Under the application of the Noblemaire principle, salaries of United Nations staff in the Professional and higher categories are based on those applicable in the civil service of the country with the highest-pay levels, currently the United States. For further details, see "Comparator".
Income replacement ratio	The ratio of pension to average net salary received during the same three-year period used in the determination of the pension benefit.
Interim adjustment	Context: Pensionable remuneration. Adjustment to pensionable remuneration amounts between comprehensive reviews.
Language incentive	For staff in the Professional and higher categories. Measure designed to promote linguistic balance in an organization; takes the form of an accelerated within-grade increment.
Lump-sum option	Context: Travel. Staff entitled to home leave are given the option of receiving either a lump-sum amount to be used for home leave travel, based on a percentage of regular airfare or airline tickets purchased by the Organization. The former would eliminate the Organization's responsibility for travel arrangements and a number of related entitlements, while in the latter case normal travel entitlements would apply.
Maximum admissible expenditures	Under the provisions of the education grant, expenses incurred by staff members on fees, boarding costs, books, etc., are added to arrive at the total of education-related expenses. A limit (maximum) is placed on the total of admissible education-related expenditures.

Mobility and hardship allowance	A non-pensionable allowance designed to encourage mobility between duty stations and to compensate for service at difficult locations.
Multi-based assessment	Processes in which the assessment of an individual or group is expanded to include groups or persons other than hierarchical supervisors, e.g., oneself (self-appraisal), peers (peer appraisal), subordinates (upward appraisal) and clients (client appraisal). If all the foregoing are covered, the process is known as 360-degree appraisal. Often used as a management/personal development tool rather than in performance appraisal as such.
Net remuneration margin	The Commission regularly carries out comparisons of the net remuneration of the United Nations staff in grades P-1 to D-2 in New York with that of the United States federal civil service employees in comparable positions in Washington, D.C. The average percentage difference in the remuneration of the two civil services, adjusted for the cost-of-living differential between New York and Washington is the net remuneration "margin".
Noblemaire principle	The basis used for the determination of conditions of service of staff in the Professional and higher categories. Under the application of the principle, salaries of the Professional category are determined by reference to those applicable in the civil service of the country with the highest pay levels.
Non-pensionable component	Context: General Service pensionable remuneration. Some outside employers used in General Service salary surveys pay, in addition to gross salaries, a number of allowances and fringe benefits, some of which they consider as "non-pensionable", that is, not taken into account in determining the retirement benefits of their employees. Those are added together to arrive at the "non-pensionable component". The sum of all "non-pensionable" elements is expressed as a percentage of net salary, which is reduced by the applicable threshold to arrive at the "non-pensionable component".

Pensionable remuneration	The amount used as the basis for effecting contributions from the staff member and the Organization to the United Nations Joint Staff Pension Fund (UNJSPF). Pensionable remuneration amounts are also used for the determination of pension benefits of staff members upon retirement.
Performance management	The process of optimizing performance at the level of the individual, team, unit, department and agency. In its broadest sense, effective performance management is dependent on the effective and successful management of policies and programmes, planning and budgetary processes, decision-making processes, organizational structure, work organization and labour-management relations and human resources.
Performance-related pay	Generic term for linking pay to performance. Terms used to describe different types of performance-related pay may vary. They include: (a) Merit pay/performance pay/pay for performance/variable pay: adjustments are made to base pay using a "comparison" to define the size of the annual increase at the organization level. Supervisors are required to rate their staff on performance over a defined period of time according to previously defined performance levels. A matrix is used to define actual increases applicable to each performance level. (b) Lump-sum bonus: may be a variable percentage of base salary or a fixed amount; payable either to an individual or to a group of individuals; may be pensionable or non-pensionable.
Post adjustment index	Measurement of the living costs of international staff members in the Professional and higher categories posted at a given location, compared with such costs in New York at a specific date.
Prices and costs (of education)	In the context of the methodology for reviewing the level of the education grant, prices refer to fees charged by selected educational institutions commonly attended by children of international staff; costs refer to expenditures incurred by staff members.

Separation payments	Upon separation from service, staff may receive compensation for one or more of the following: accumulated annual leave, repatriation grant, termination indemnity, death grant.
Single rate salaries	Net salaries determined for staff without a primary dependant.
Staff assessment	Salaries of United Nations staff from all categories are expressed in gross and net terms, the difference between the two being the staff assessment. Staff assessment is an internal United Nations form of "taxation" and is analogous to taxes on salaries applicable in most countries.
Tax abatement	In the context of dependency allowances, tax credit or relief provided to taxpayers who are responsible for the financial support of dependants such as spouse, children, parents, etc. in the tax systems of a number of countries.
Tax Equalization Fund	A fund maintained by, for example, the United Nations, that is used for reimbursing national taxes levied on United Nations income for some staff members.
Tier II standard	Job classification standard developed for a specific field of work to complement the Master Standard for the classification of Professional and higher category posts.

LETTER OF TRANSMITTAL

26 August 1997

Sir,

I have the honour to transmit herewith the twenty-third annual report of the International Civil Service Commission, prepared in accordance with article 17 of its statute.

I should be grateful if you would submit this report to the General Assembly and, as provided in article 17 of the statute, also transmit it to the governing organs of the other organizations participating in the work of the Commission, through their executive heads, and to staff representatives.

I avail myself of this opportunity to renew to you, Sir, the assurances of my highest consideration.

(Signed) M. BEL HADJ AMOR
Chairman

His Excellency Mr. Kofi Annan
Secretary-General of the United Nations
New York

SUMMARY OF RECOMMENDATIONS THAT CALL FOR DECISIONS BY THE GENERAL ASSEMBLY AND THE LEGISLATIVE ORGANS OF THE OTHER PARTICIPATING ORGANIZATIONS

Paragraph reference

A. Remuneration of the Professional and higher categories

(i) Base/floor salary scale

62 The Commission decided to recommend to the General Assembly that the current base/floor salary scale for the Professional and higher categories of staff be increased by 3.1 per cent through consolidation of post adjustment, with effect from 1 March 1998. The proposed base/floor salary scale may be found in annex V.

(ii) Staff assessment

62 The Commission decided to recommend to the General Assembly that the revised staff assessment scale shown in annex VI be used from 1 March 1998 in conjunction with the base/floor salary scale for the Professional and higher categories of staff shown in annex V.

B. Conditions of service applicable to both categories

Performance management

219 The Commission decided to recommend to the General Assembly and the legislative/governing bodies of other common system organizations that:

- The recommendations on cash award contained in its twentieth (1994) annual report should be replaced by those outlined under paragraph 219 (a) (i)-(v);

- Any pay-based approach to performance recognition should be introduced on a pilot basis; such pilot schemes should be developed in close consultation with the Commission secretariat;

- Its earlier recommendations on the management of underperformance, as contained in its twentieth annual report, should be complemented with the additional guidance contained in paragraph 213 of the present report.

SUMMARY OF FINANCIAL IMPLICATIONS OF THE COMMISSION'S RECOMMENDATION TO THE GENERAL ASSEMBLY

(for all sources of funds)

Paragraph reference

Remuneration of the Professional and higher categories

Base/floor salary scale

62 The financial implications associated with the Commission's recommendation regarding the implementation of the revised base/floor salary scale in annex V for the Professional and higher categories of staff effective 1 March 1998 are estimated at $2,434,890 per annum, system wide. For the 10 months of 1998, the corresponding financial implications are estimated at $2,029,000. A breakdown by elements may be found under paragraph 61 of the present report.

Chapter I

ORGANIZATIONAL MATTERS

A. Acceptance of the statute

1. Article 1 of the statute of the International Civil Service Commission (ICSC), approved by the General Assembly in its resolution 3357 (XXIX) of 18 December 1974, provides that:

> "The Commission shall perform its functions in respect of the United Nations and of those specialized agencies and other international organizations which participate in the United Nations common system and which accept the present statute ..."

2. To date, 12 organizations have accepted the statute of the Commission and, together with the United Nations itself, participate in the United Nations common system of salaries and allowances. Two other organizations, although not having formally accepted the statute, have participated fully in the Commission's work.

B. Membership

3. The membership of the Commission for 1997 is as follows:

Mr. Mohsen Bel Hadj Amor (Tunisia)** (Chairman)

Ms. Corazon Alma de Leon (Philippines)***

Mr. Mario Bettati (France)*

Mr. Alexander V. Chepourin (Russian Federation)***

Mrs. Turkia Daddah (Mauritania)**

Mr. Antonio Fonseca Pimentel (Brazil)*

Mr. Humayun Kabir (Bangladesh)***

Ms. Lucretia Myers (United States of America)*

Mr. Jaroslav Riha (Czech Republic)**

Mr. Ernest Rusita (Uganda)***

Mr. Alexis Stephanou (Greece)*

Mr. Wolfgang Stöckl (Germany)**

Mr. Ku Tashiro (Japan)*

Mr. Carlos S. Vegega (Argentina)** (Vice-Chairman)

Mr. El Hassane Zahid (Morocco)***

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* Term of office expires 31 December 1997.

** Term of office expires 31 December 1998.

*** Term of office expires 31 December 2000.

C. Sessions held by the Commission and questions examined

4. The Commission held two sessions in 1997: the forty-fifth, which took place from 21 April to 2 May at the headquarters of the United Nations Educational, Scientific and Cultural Organization (UNESCO) in Paris, and the forty-sixth, which took place from 14 to 25 July at United Nations Headquarters.

5. At those sessions, the Commission examined issues that derived from decisions and resolutions of the General Assembly as well as from its own statute. A number of decisions and resolutions adopted by the Assembly that required action or consideration by the Commission are discussed in the present report.

D. Forum on new directions in human resources management

6. In recent years the Commission has been seeking ways to strike a better balance in all areas of its mandate. To address this, immediately prior to its summer 1997 session, ICSC held a two-day residential forum on new directions in human resources management at Glen Cove, New York. The Forum was attended by members of the Commission, its secretariat and the Consultative Committee on Administrative Questions (CCAQ), some 37 participants in all (the staff representatives had also been invited). A consultant with broad experience in the field of management development and knowledge of the United Nations system facilitated the process. In organizing that initiative, a key goal for the Commission was to strengthen the capacity of the common system so that it met the needs and answered the concerns of all parties and acted as a catalyst for change. Linked to this was the Commission's conviction that its continued relevance now and into the next century could be facilitated by a more strategic approach.

7. The Commission engaged in brainstorming sessions on the management of change and explored ways of introducing flexibilities into the common system. Participants were asked to identify the key features of the common system of the future. Approximately a dozen issues were identified. Some examples were a strengthened independent international civil service, better resource management, which would include streamlining and the retooling of mandates, a committed work force that was able to optimize the benefits of its cultural diversity and a focus on reforming standards and ethics to reflect shared values and a common vision. Four topics that were perceived to be high-leverage/low cost ones and could be accomplished within a reasonable time-frame were selected for immediate follow-up.

8. The Glen Cove initiative demonstrated the Commission's commitment to change and its openness to innovation and flexibility; it showed that it was willing to engage in give and take with, as well as listen to, the other key players. The informal setting and use of a facilitator greatly enhanced communication, creativity, the exchange of ideas, shared understanding of the subject matter and the ability to reach consensus. All participants agreed that opportunities for similar brainstorming should actively be sought.

E. Subsidiary body

9. The Commission's Advisory Committee on Post Adjustment Questions (ACPAQ) held its twenty-first session at United Nations Headquarters from 1 to

7 April 1997. It consisted of the following members: Mr. Carlos S. Vegega (Argentina), Vice-Chairman of the Commission and Chairman of the Committee; Mr. John Astin (United Kingdom of Great Britain and Northern Ireland); Mr. Edmundo Berumen-Torres (Mexico); Mr. Youri Ivanov (Russian Federation); Mr. Yuki Miura (Japan) and Mr. Emmanuel Oti Boateng (Ghana).

Chapter II

ACTION TAKEN IN RELATION TO RESOLUTIONS AND DECISIONS OF THE GENERAL ASSEMBLY AND THE LEGISLATIVE/GOVERNING BODIES OF OTHER ORGANIZATIONS OF THE COMMON SYSTEM

A. General Assembly resolution 47/216

10. In section IV, paragraph 3, of its resolution 47/216 of 23 December 1992, the General Assembly requested the Commission to report to the Assembly at its fifty-first session on the operation of the education grant on the basis of the revised methodology approved by the Commission in 1992. The Commission's consideration of the matter is reported in paragraphs 151 to 166 below.

B. General Assembly resolution 51/216 and decision 51/465

11. The Commission considered General Assembly resolution 51/216 of 18 December 1996 regarding the action by the Assembly on the Commission's twenty-second (1996) annual report.[1] The Commission also examined the resolutions and decisions adopted by the legislative/governing bodies of other common system organizations that had a bearing on the Commission's work programme. Pertinent outcomes of the first part of the Assembly's resumed fifty-first session (held in early 1997) were brought to the Commission's attention, including, inter alia, the request to the Commission in decision 51/465 of 3 April 1997 to review at the earliest opportunity the travel entitlements of staff of the United Nations common system, and to report to the Assembly thereon at the second part of its resumed session (scheduled for May 1997). The Commission took action on a number of matters addressed in the above-mentioned resolution and decision, as reported below.

12. In section I.C, paragraph 8, of its resolution 51/216, the General Assembly requested the Commission to provide general comments on the concept of performance awards and bonuses to the Assembly at its fifty-second session. The Commission's consideration of this matter is contained in paragraphs 167 to 219 below.

13. In section I.E, paragraph 3, of the same resolution, the General Assembly reiterated its request to the Commission urgently to complete its study regarding the methodology for establishing a single post adjustment index for Geneva, and to complete the study needed to implement the single post adjustment at the earliest date, and no later than 1 January 1998. Details of the Commission's consideration of this issue may be found in paragraphs 63 to 102 below.

14. Under section II of the resolution, the General Assembly noted the preparations by the Commission for the 1997 review of the General Service salary survey methodologies, requested the Commission to study specific aspects of the methodologies in the context of that review (see para. 3 of sect. II of the resolution) and also requested the Commission to defer to a final decision on the methodology pending the review of the application of the Flemming principle by the Assembly at its fifty-second session. Details of the Commission's consideration of this matter may be found in paragraphs 103 to 131 below.

15. Under section V of the resolution the General Assembly requested the Commission to continue its review of the subject of appointments of limited

duration without delay. The Commission's response to this request is contained in paragraphs 220 to 249 below.

16. The Commission's consideration of the General Assembly's request in its decision 51/465 regarding travel and related expenses is reported in paragraphs 250 to 276 below. At its forty-sixth session (July 1997) the Commission was apprised of the General Assembly's request in part IV of resolution 51/218 E of 17 June 1997 for ICSC to develop a proposal to provide a post allowance and a separate maintenance allowance for those personnel who leave their families at their home duty station while on a mission assignment. The Commission's consideration of this matter is reported under paragraphs 277 to 285 below.

Views of the organizations

17. The Chairman of CCAQ reported on the decisions reached by CCAQ on three specific matters raised in General Assembly resolution 51/216.

18. The first was the comparator civil service (sect. 1.B). CCAQ would request the Administrative Committee on Coordination (ACC) to invite the General Assembly to give consideration to changing the margin range to 120-130, in the light of the Commission's findings on German civil service pay levels. In that connection, CCAQ would appreciate receiving from the ICSC secretariat at the forty-sixth session updated information on the gap between the pay levels of the German and the United States civil services, which ICSC had confirmed it would continue to monitor.

19. The second subject was special occupational rates (sect. 1.C) - an issue on which CCAQ had not always been united. A number of concerns had been expressed about the introduction of occupational pay rates, many of which remained valid. The occupational rates issue had arisen because the Noblemaire principle was not being applied. The modalities developed by the Commission some years earlier for the possible introduction of special occupational rates had been built on a linkage with occupational groups as identified through the Common Classification of Occupational Groups (CCOG). CCAQ considered that the determination of such rates should rather be related to the competencies required to do the job in question. Special occupational rates should thus be renamed; competency differentials would be one possible alternative. Such differentials, to be used to attract and retain highly qualified specialists, would be determined by the agency concerned, taking into account the need to satisfy the educational level required by the incumbent of the post and the ongoing application of the level of competence to the post in question. It was foreseen that they would be paid to a relatively small percentage of the workforce. Organizations proposing to move forward in that area would refine the criteria on which such differentials would be based. CCAQ invited ICSC to consider the amount of the differential as a matter of urgency; it would provide further information about the developmental work at the Commission's next session.

20. Third, CCAQ had begun to consider how best it might respond to the General Assembly's interest in the possible phasing out of the expatriation elements of the margin (sect. 1.E). As a starting point, it had undertaken a historical review of the manner in which expatriation had been treated since the inception of the League of Nations in 1921. It suggested that ICSC and CCAQ secretariats should look into the following issues in preparation for the discussion of the matter by ICSC in 1998: (a) the factors to be reflected in the margin; (b) the proportion of the margin deemed to meet expatriation; (c) the benefits and services not available to employees and their families working outside their national setting; (d) an attitude survey of common system staff on the

ramifications of their expatriation; (e) consideration of the financial obligations of internationally recruited staff in their home countries over the course of their career; and (f) an analysis of selected national legislation relating to the rights, benefits and services maintained or relinquished by expatriated individuals.

21. The representative of the International Telecommunication Union (ITU) noted that competency differentials had been discussed at a recent meeting of the ITU Consultative Group, which the ICSC Chairman had attended. He was of the view that in considering differentiated payments for specialized functions, the Commission should also take into account the differing financial situations of the organizations. He hoped that the matter could be discussed in greater detail at the summer session.

22. The representative of the International Civil Aviation Organization (ICAO) said that the trend towards privatization in the civil aviation sector, with accompanying higher salaries, was exacerbating his organization's recruitment and retention difficulties. ICAO was often obliged to recruit at higher steps in the grade, or even higher grades in trust-funded posts at the request of donor Governments concerned. It was able to recruit experts who had taken early retirement from their national civil services, but recruitment in the 30 to 45-year age bracket, and from the private sector, was problematic, also as a consequence of further constraints posed by geographical distribution requirements.

23. The representative of the International Atomic Energy Agency (IAEA) noted that, for the Agency, the problem was not so much the volume of applications as their quality. Policy objectives such as geographical distribution and gender balance sometimes complicated recruitment, even for relatively generalist posts. Special occupational rates would not address such problems; hence CCAQ had come up with the idea of competency rates, which it was suggested be applied on a pilot basis.

24. With regard to the requested study on travel entitlements, he would be happy to share with the ICSC secretariat the information that the Agency had collected for a recent review of its own travel arrangements. He noted that for the Agency, official travel (especially for example, of nuclear safeguards inspectors) was a programme activity, not an entitlement. (See the Commission's consideration of the issue of standards of travel and per diem, paras. 250-276 below.)

Discussion by the Commission

25. Members considered that the notion of competency differentials advanced by CCAQ required some further thought. Questions were raised as to whether the role of the Commission in that regard should be merely to set rates, or also to determine criteria. While the financial circumstances of the organizations should not be overlooked, some hesitation was expressed about designing packages tailored to fit such circumstances: that could be a double-edged sword. The idea of a pilot project had some interest, but such differentials should not proliferate: the numbers should therefore be small and the duration limited. The Commission noted that the subject was closely tied to the issue of the organizations' recruitment and retention difficulties on which opinions continued to differ. The Commission concluded that it should revert to the matter of competency differentials at a later stage, on the basis of more specific proposals by CCAQ.

26. The Commission was informed that articles 10 and 11 of its statute provided the necessary statutory basis for it to undertake a review of travel entitlements, as requested by the General Assembly. From the discussions in the Assembly it was clear that the Assembly expected the Commission to focus on the class of air travel and levels of daily subsistence allowance, including supplements.

27. Noting that the legislative/governing bodies of several organizations had adopted resolutions calling for improvements in the status of women, members requested the secretariat to provide updated statistical information on gender balance in the common system.

Chapter III

REPORT OF THE WORKING GROUP ON THE CONSULTATIVE PROCESS AND WORKING ARRANGEMENTS

28. At its forty-fifth (April-May 1997) session, the Commission considered a request by the Coordinating Committee for International Staff Unions and Associations of the United Nations System (CCISUA) for the establishment of a tripartite working group to review the functioning of the Commission. Following consultations with the representatives of the executive heads, CCISUA and the Federation of International Civil Servants' Associations (FICSA), the Commission agreed to the establishment of the Working Group on the Consultative Process and Working Arrangements as requested by CCISUA and accepted the draft arrangements for the group emerging from informal consultations among all parties (see annex I). The Commission also designated Messrs. Mario Bettati, Wolfgang Stöckl, Carlos S. Vegega and El Hassane Zahid to participate in the Working Group on its behalf.

29. Subsequently, on 13 May 1997, the Chairman of CCAQ and the Presidents of CCISUA and FICSA were informed of the arrangements under way for the meeting of the Working Group and were invited to designate members to participate in the Working Group on behalf of their respective bodies. Shortly thereafter, the Commission was informed of the names of four representatives of the executive heads who would participate in the deliberations of the Working Group.

30. On 2 July, the ICSC secretariat confirmed to the members of the Working Group designated by the Commission and the executive heads as well as the Presidents of FICSA and CCISUA the arrangements for the scheduled meeting of the Working Group on 7 July.

31. In a letter dated 2 July, the President of FICSA informed ICSC that the FICSA membership thought it more prudent to seek postponement of the meeting to a later date (see annex II).

32. Also on 7 July, the members of the Working Group designated by the Commission and CCAQ met briefly without the participation of CCISUA and FICSA. Copies of the above-mentioned letter of FICSA were distributed to them. The participants were also informed that the decision of CCISUA regarding its participation in the Working Group would be communicated shortly.

33. At the outset, the members present noted with regret the absence of CCISUA and FICSA. It was recalled that the Commission had agreed to the establishment of the Working Group at the request of CCISUA and that the terms of reference had been developed in close consultation with the representatives of the two staff federations. It was also noted that the Working Group had been established with a view to providing an opportunity to staff representatives to put forward their ideas and/or to give their views as regards various aspects of the functioning of the Commission. In view of the above, it was concluded that the meeting could not proceed without the participation of staff representatives.

34. Members of the Working Group present informed the Commission that the Working Group could not meet for the purpose originally envisaged and that it was up to the Commission to decide on further action in that regard. However, in their individual capacity, most members suggested to ICSC that the meeting of the Working Group be rescheduled to a later date, within the framework of the

terms of reference approved by the Commission at its forty-fifth (April-May 1997) session, thereby responding positively to the request from CCISUA and FICSA for a postponement of the meeting.

35. Following the above-mentioned meeting of the members nominated by the Commission and the executive heads, a letter dated 7 July was received from CCISUA (see annex III).

Views of the organizations

36. The Chairman of CCAQ expressed the hope that the dialogue between the Commission and the staff federations would be resumed in the near future. He also expressed the view that the Working Group's meeting should be held at one of the small duty stations in an informal atmosphere.

Discussion and conclusions of the Commission

37. The Commission noted that its secretariat and the Office of Conference Services of the United Nations Secretariat had spent a significant amount of time in making arrangements for the meeting of the Working Group and had incurred some expenses in that regard. It also noted that the members of the Working Group designated by the Commission and the executive heads had made themselves available for the scheduled meeting at some expense to their respective organizations. Those efforts and expenses could have been spared if the staff federations had submitted their requests for the postponement of the meeting well in advance of the scheduled date rather than on the morning of the meeting itself.

38. The Commission was informed that one of the staff federations would prefer to hold the meeting of the Working Group in October or November 1997. In that regard it noted that subsidiary bodies of the General Assembly were barred from holding meetings when the Assembly was meeting. While CCAQ proposal that the Working Group's session be held at a small duty station had some merit, the Commission considered that in view of the logistical support required, the meeting should be held in New York. Bearing in mind that conference facilities, and in particular interpretation, could not be arranged if the Working Group were to meet before the end of the fifty-second session of the Assembly, it agreed that the Working Group meeting should be held some time in the second half of January or the first half of February 1998. It requested the secretariat to make arrangements for the meeting of the Working Group within the above time-frame in consultation with all parties concerned.

39. The Commission also noted that to agree on a facilitator acceptable to all parties, sufficient time must be allotted for consultations among the members of the Working Group. It was informed that following discussions with several individuals who could be considered as possible facilitators, it had emerged that they expected to be given sufficient time before the first meeting of the Working Group to familiarize themselves with the issues involved. The Commission agreed that that should be borne in mind while deciding on the date for the future meeting of the Working Group.

40. Bearing in mind the above considerations, the Commission was firmly of the view that all parties concerned should agree on the date and the facilitator at least two, and preferably three, months in advance of the scheduled meeting of the Working Group.

Chapter IV

CONDITIONS OF SERVICE OF THE PROFESSIONAL AND HIGHER CATEGORIES

A. Evolution of the margin between the net remuneration of the United States federal civil service and that of the United Nations system

41. Under a standing mandate from the General Assembly, the Commission continued to review the relationship between the net remuneration of the United Nations staff in the Professional and higher categories in New York and that of the United States federal civil service employees in comparable positions in Washington, D.C. (hereinafter referred to as "the margin").

42. In its twenty-second annual report,[2] the Commission reported a forecast of the margin for 1996 reflecting, inter alia, various methodological changes approved by ICSC in the context of its review of the application of the Noblemaire principle.[3] Following a review of the Commission's 1996 forecast of the margin, the General Assembly, in section I.C of its resolution 51/216, decided that the margin methodology outlined in the twenty-first annual report of ICSC[3] should continue to apply without the modifications described in paragraph 119 (b) (ii) and (iii) of that report. The Commission was informed of the margin on the basis of both methodologies, i.e., including and excluding the methodological changes mentioned above.

43. As part of the Commission's 1995 annual report, it reported to the General Assembly that it would continue to monitor the total compensation of the German civil service and would update the current data annually.[4] The Commission was informed of the evolution in the net remuneration in the two civil services and the result of the total compensation comparison between the remuneration of the United States and the German civil services.

Views of the organizations

44. The Chairman of CCAQ took note of the level of the margin estimate and welcomed a suggestion to shorten the reports of the Commission on the margin in the future. CCAQ was of the view that only the margin based on the methodology accepted by the General Assembly need be reported in the Commission's annual report.

45. The forecast, based on the total compensation comparison between the German and the United States federal civil services, confirmed that the United States no longer had the highest-paying civil service. Thus, the Noblemaire principle was not being applied. Recognizing that the Commission had considered that changing the comparator would be a complex undertaking, CCAQ proposed that in the interim the results be used as a mechanism to apply the Noblemaire principle. Specifically, CCAQ proposed that:

(a) The net remuneration margin range be revised from 110-120 to 120-130;

(b) United Nations pay levels be set at the bottom of the revised margin range of 120 as from 1 January 1998;

(c) Over an appropriate period of time, United Nations remuneration levels should be brought to the mid-point of the revised margin range, namely 125.

Discussion by the Commission

46. The Commission took note of the margin forecast of 115.7 for 1997. Details of the margin calculation are shown in annex IV. It also noted that in 1997 the comparator had not fully implemented the pay reforms under the Federal Employees' Pay Comparability Act (FEPCA).

47. Some members were of the view that the margin figure of 111.2 calculated on the basis of the methodological changes reported under paragraph 119 (b) (ii) and (iii) of the Commission's annual report for 1995[3] should also be reported to the General Assembly for information purposes. However, pending a further review of the matter, margin levels corresponding to that figure should at least be monitored by the Commission on a regular basis. Other members agreed with CCAQ and were of the view that all calculations and reporting of the margin should be based on the methodology accepted by the Assembly.

48. The Commission recalled that the General Assembly had decided to defer consideration of the German/United States comparisons to its forthcoming session. As a result, some members considered that it would not be prudent to endorse the recommendation of CCAQ to revise the margin levels at present. In that context, those members noted that the German federal civil service was experiencing reform. Furthermore, as a result of developments regarding the European Union, changes might be made in the present structure and remuneration of the German federal civil service that could have an impact on the relationship between the remuneration levels of the two federal civil services. Other members endorsed the CCAQ proposal to revise the margin range from 110-120 to 120-130, while two others suggested that the matter be re-examined in 1998. Some members felt that the estimates presented to the Commission were not a solid basis for making a recommendation to the General Assembly. These members were of the opinion that it was essential to update the comparison using the total compensation methodology as approved by the Commission before any recommendations could be made.

49. One member pointed out that the update done by the secretariat showed that the net remuneration of the German civil service had fallen further behind that of the United States federal civil service. It was noted that the update showed the United States federal civil service had received a 5.9 per cent increase over the two-year period 1996-1997, while the German civil service had received only a 1.1 per cent increase. She further pointed out that in paragraph 172 of its 1995 annual report[5] the Commission had reported to the Assembly that the net remuneration of German civil servants after adjustment for the cost-of-living differential between Bonn and Washington, D.C. was 14 per cent lower than that of the United States federal civil service. The update provided in 1997 showed that this gap had now widened to 18.8 per cent and, therefore, there was in her opinion no technical basis to recommend that the margin be increased. Several members, however, pointed out that the measurement between the German and the United States civil services was not based on net remuneration but rather on a comparison using the total compensation methodology approved in 1991 by the General Assembly for that specific purpose.

50. Recalling that it had informed the General Assembly of its intention to update annually information on developments in the remuneration of the German civil service, the Commission considered a number of specific issues, including the cost-of-living difference between Bonn and Washington, D.C. It noted that that differential had not been updated since the Commission last addressed the matter comprehensively, in 1995. Some members considered that the exchange rate used in the 1995 comparisons was significantly different from the one currently

in effect, and that that would have an impact on the Bonn/Washington cost-of-living differential and consequently on the total compensation comparison. It was pointed out that the exchange rate variations would have an impact on the conversion of salary data to a single currency as well as on the cost-of-living differential. However, since the same exchange rate was used in both places, it dropped out of the equation leading to the final results.

51. Some members felt that certain assumptions made in the comparison were not correct or were incomplete. Overall, however, it was felt that those assumptions would not have a major impact on the results of the comparison between the two national civil services and that the result reported in 1995 could be assumed to have remained largely unchanged. In that context, it was recalled that the total compensation comparison carried out in 1995 had shown that the German civil service remuneration package was 110.5 per cent of that of the United States federal civil service.

52. Other members were of the view that the cost of living, of which the exchange rate was an important factor, must be updated before any conclusions could be drawn with regard to the comparison of the total compensation of the German civil service with that of the United States federal civil service.

53. With regard to the evaluation of the German and the United States health-care schemes, it was noted that in lieu of an actuarial evaluation, as was done in the 1995 comparison, the value of health care in the German and United States remuneration packages had been updated by use of the relevant medical components of the respective German and the United States consumer price indices. That had been done in consideration of the rather limited impact of the health-care component in the total compensation comparison and the relatively significant cost of an actuarial evaluation. However, one member also explained that the medical component of the consumer price index could not be used to estimate the change in the value of the United States health insurance as was done in the current update. She explained that the rates and benefits offered in the health insurance packages were negotiated annually and, therefore, changes would not be consistent with the movement of the medical component of the consumer price index.

Decisions of the Commission

54. The Commission decided:

(a) To report to the General Assembly the forecast of the margin of 115.7 between the net remuneration of the United Nations staff in grades P-1 to D-2 in New York and that of the United States federal civil service in Washington, D.C., for the period from 1 January to 31 December 1997;

(b) To inform the Assembly that again in 1997 the comparator had not fully implemented FEPCA pay reforms;

(c) To report to the Assembly that, with regard to the German/United States total compensation comparison, preliminary estimates showed no significant change from the results reported in 1995, when it was shown that the German civil service remuneration package was 10.5 per cent higher than that of the United States federal civil service.

B. Base/floor salary scale

55. The concept of the base/floor salary scale was introduced by the General Assembly with effect from 1 July 1990 in section I.H of its resolution 44/198 of 21 December 1989, in which it provided for the establishment of a floor net salary level for staff in the Professional and higher categories by reference to the corresponding base net salary levels of officials in comparable positions serving at the base city of the comparator civil service. The base/floor system was designed not only to provide a minimum level of remuneration for the United Nations system staff but also to serve as a reference point for calculating certain separation payments and the mobility and hardship allowance. Adjustments to the salary scale were made on 1 March of each year from 1991 to 1995 and on 1 January 1997.

56. Analysis for calendar year 1997 showed that United Nations net base salary at the dependency rate at P-4, step VI (the approved point for comparison) was $57,198; the equivalent comparator amount was $58,970, or 3.1 per cent higher. The Commission was informed that, in order to bring the two scales in line, an upward adjustment by 3.1 per cent to the common system scale would be required.

Views of the organizations

57. The Chairman of CCAQ supported the proposal for an adjustment of 3.1 per cent in the base/floor salary scale, with effect from 1 March 1998.

Discussion by the Commission

58. The Commission noted that the increase of 3.1 per cent for 1998 would reflect the increase granted to the United States federal civil service for 1997, and such recommendation would be fully consistent with the decision of the General Assembly in resolution 44/198 as outlined above.

59. The Commission recalled that in 1996 it had recommended to the General Assembly a revised scale of staff assessment to be used in conjunction with gross base salaries of the Professional and higher categories of staff in recognition of the need to maintain an appropriate balance between staff assessment revenues and the related disbursements for taxes paid by staff using the system of the Tax Equalization Fund. The Assembly, in section I.C of its resolution 51/216, had approved the above recommendation of the Commission effective 1 January 1997. In the context of its consideration of a revision to the base/floor salary scale, the Commission noted the views of the United Nations Secretariat that, bearing in mind the recent change in staff assessment rates, it was too early to assess their impact on the resources of the Tax Equalization Fund. Any necessary change to the staff assessment scale for tax equalization purposes would be considered by the Commission in 1998 in consultation with the United Nations.

60. In the meantime, some minor changes to the staff assessment rates used in conjunction with the gross base salaries of the Professional and higher categories of staff without primary dependants would be necessary. The revised rates reflecting the required changes may be found in annex VI.

61. If the base/floor salary scale were to be adjusted on 1 March 1998 by 3.1 per cent through the usual method of consolidating multiplier points on a no-loss/no-gain basis, the impact for the common system would be as follows:

(a) For duty stations that would fall below the level of the new base/floor: $48,650;

(b) In respect of the mobility/hardship allowance: $1,946,800;

(c) In respect of the scale of separation payments: $439,440;

(d) Total financial implications per year: $2,434,890.

Since it was proposed that the revised base/floor salary scale be implemented from 1 March 1998, the financial implications for 10 months of 1998 were estimated at $2,029,000.

Decision of the Commission

62. The Commission decided to recommend to the General Assembly that the revised base/floor salary scale for the Professional and higher categories shown in annex V be approved for implementation with effect from 1 March 1998. The Commission further recommended that the revised rates of staff assessment shown in annex VI for those without primary dependants to be used in conjunction with gross base salaries of the above-mentioned categories of staff also be introduced effective the same date.

C. General Assembly request in resolution 51/216: post adjustment at Geneva

63. In section I.E, paragraph 3, of its resolution 51/216, the General Assembly reiterated its request to the Commission urgently to complete its study regarding the methodology for establishing a single post adjustment index for Geneva, and to complete the study needed to implement the single post adjustment at the earliest date, and no later than 1 January 1998.

64. It will be recalled that the initial request by the General Assembly on the matter had been made in 1993, in section II.G of its resolution 48/224 of 23 December 1993, in which it requested the Commission to ensure that place-to-place surveys conducted for all headquarters duty stations were fully representative of the cost of living of all staff working in the duty station.

65. In the context of the General Assembly's request to the Commission to establish a single post adjustment index for Geneva, it is important to note that currently a single post adjustment index reflecting prices in Geneva, but excluding those in the contiguous area of France, is used to determine the post adjustment of all staff whose duty station is Geneva. The above-mentioned request from the Assembly, however, implies that the cost of living of staff working in Geneva but residing in the French border towns should also be included in the calculation of the Geneva post adjustment index, thereby leading to the construction of a composite post adjustment index (i.e., combining the cost of living of staff residing in both Geneva and France).

66. The Commission had submitted a detailed report in response to the request of the General Assembly in its resolution 48/224, on the issue of the Geneva post adjustment in the annual report for 1995.[6] At the time the Commission had identified two possible approaches to respond to the Assembly's request. Along with those approaches, it had also brought to the Assembly's attention some of the legal difficulties that might be encountered in pursuing them.

67. In response to the requests of the General Assembly in its resolutions 50/208 of 23 December 1995, section I.B, paragraph 2, and 51/216, section I.E, paragraph 3, for the completion of a study leading to the establishment of a single post adjustment for Geneva, the Commission considered that there was a need for a more comprehensive review of those difficulties. In view of that, it requested the Chairman of ACPAQ and its secretariat to discuss the legal, administrative and technical issues involved with the administrations of the Geneva-based organizations. At the end of those discussions, the Chairman of ACPAQ prepared a summary of the issues raised and circulated it to the participants. The summary may be found in annex VII to the present document. The legal issues raised by the International Labour Organization (ILO), ITU, the Office of the United Nations High Commissioner for Refugees (UNHCR), World Health Organization (WHO), World Intellectual Property Organization (WIPO) and World Meteorological Organization (WMO) were provided to the Commission in writing and may be found in annexes VIII to XIII, respectively. Submissions from the organizations, some issues that had been raised during discussions the Chairman of ACPAQ and the ICSC secretariat had with the Geneva-based organizations as well as the contents of annex VII were reviewed by the United Nations Legal Counsel and his views thereon, which may be found in annex XIV, were also available to the Commission during the course of its consideration of the matter.

Views of the organizations

68. The Chairman of CCAQ, referring to the position taken by CCAQ on the matter when it was considered at previous session of the Commission, reiterated the need to ensure that all outstanding matters must be resolved before a final decision was reached.

69. He thanked the Commission and its secretariat for the approach taken in the method of consultation with organizations on the matter. The way in which discussions were organized with the administrations and legal advisers of the Geneva-based organizations had proved to be a most useful way of ensuring that the views of the organizations were fully reflected in the documents available to the Commission. He noted that a process of consultation which allowed each organization to express to the secretariat its views and concerns could be cost beneficial to the process.

70. He stated that CCAQ had taken careful note of the comments of the United Nations Legal Counsel as contained in his letter of 15 July 1997 and observed that there were still a number of questions that remained open. As was pointed out by the Legal Counsel those questions were in addition to the legal aspects, political, practical and administrative. He observed that the administrative complexities and costs were enormous. At one level there were the complexities of revising the organizations' regulations and rules. That was not as simple or straightforward as it might appear. It was a legal matter that required taking into account the framework within which each organization operated as it related, for example, to its headquarters agreement. At another level, there were the complications of administering a series of indices established to respond to the need for transitional arrangements.

71. He drew attention to the comment of the Legal Counsel on the need for a cost benefit analysis of the entire exercise before a decision was taken. He expressed strong support for that approach. He noted that all the costs of the exercise could not, however, be foreseen at the present stage; for example the implications of potential staff rule changes were very difficult to assess at

the present stage. He stated that the General Assembly should have full information before taking any far-reaching decision.

72. He reiterated the position of CCAQ that the common system ramifications of the issue could not be ignored. He noted that the Commission was attempting to put in place a methodology for measuring something that had not been measured before, namely differences in the cost of living resulting from where staff members resided rather than where they worked. At that stage, the methodology might apply to only one duty station, but in the future, calls might be heard for differentiating post adjustment indices by different sections or localities of a major urban area. Moreover, such increased fragmentation of an already over-complex post adjustment system, clearly runs counter to the concern so frequently expressed - and which became a leitmotif of the "Glen Cove" retreat - for greater simplicity in the processes which surround the management of human resources in the common system.

73. The representative of ILO stated that the United Nations Legal Counsel's opinion did not address in-depth all the issues. ILO did not agree with most of the Legal Counsel's opinion. While recognizing that no one could predict with certainty how the Administrative Tribunals would decide on the issue, ILO did not share the Legal Counsel's estimate of the legal risks incurred with the various options examined, and it did not think that "appropriate transitional measures" would be sufficient to avoid censure by the Tribunals. It did, however, agree with the Legal Counsel that there were other problems that the Commission should consider and in particular that a cost-benefit analysis was called for before any final decision could be made.

74. ILO had studied further the implications of possible changes to the Geneva post adjustment index. Based on past experience, it estimated that any change would be challenged by practically all the Professional staff in Geneva (approximately 500 officials), which would entail a tremendous increase in workload for the personnel, legal and financial departments, and that the ensuing protest and strike movements could paralyse the work of ILO for a prolonged period. It also estimated that the transitional measures would create additional work for the administrative services, as for some time, different indices would have to be applied to different staff. ILO also considered that there were still many unanswered questions, such as how to deal with short-term staff, the daily subsistance allowance (should it also take into consideration the prices of hotels and restaurants in neighbouring France?), the rental subsidy, and a number of other allowances. The inescapable conclusion was that even if the Commission were prepared to leave aside the legal obstacles, it was not yet in a position to make a decision.

75. Regarding the comment, in the opinion of the United Nations Legal Counsel, that the Geneva-based organizations were interested parties, she stated that that per se did not render their views on the matter questionable. Indeed the Legal Counsel, as a staff member of the United Nations, which had the General Assembly as its governing body, could also be seen as an interested party.

76. She felt that the questions raised by the Legal Counsel of the ILO and the legal counsels of other organizations in Geneva deserved a more in-depth consideration. The opinion avoided several problems and provided simple answers to extremely complex problems. She noted for example that staff normally resided at the duty station to which they were assigned. In the case of Geneva, however, approximately one third of the staff had freely chosen to live in France, raising the question of inequity vis-à-vis the remaining two thirds of the staff residing in Geneva. Staff residing in Geneva could not be considered

as having decided to reside in Geneva inasmuch as that was the duty station to which they were assigned. It was, in fact, that body of staff who would have to bear the consequences of the actions of their colleagues, who constituted the other one third. In the view of the United Nations Legal Counsel there had been no violation of the rights of the staff living in France, ignoring the fact that it was the rights of the group living in Geneva that had been violated as they did not have equal access to prices in France. The fundamental principle that only outlets that were accessible to all staff should be taken into account in post adjustment had been ignored.

77. She disagreed with the opinion of the United Nations Legal Counsel that there could be no violation of the principle of equality of treatment between Professional staff and General Service staff because the principle of equality of treatment had been violated because two categories of staff were different. In that regard she observed that certain modifications in the conditions of one category of staff could, in certain circumstances, be considered as a violation of the principle of equality. The United Nations Legal Counsel could have examined the issue with a view to determining if such conditions existed in the present case. In the absence of such an examination no valid conclusions could be drawn from the opinion.

78. She observed that the legal flaws associated with a single post adjustment index were of much more significance than was recognized by the United Nations Legal Counsel.

79. With respect to the implementation of two post adjustment indices for Geneva, she stated that it was difficult to understand the reasoning behind the legal advice that those indices were acceptable from a legal point of view. The United Nations Legal Counsel had stated that two indices were acceptable, "taking into account the fact that it is difficult to try to establish a single adjustment for a region divided by a national boundary". She stated that she did not agree with that view because the fact that an alternative solution had problems that were difficult to overcome did provide sufficient basis that an alternative solution was legally sound. She noted that that admission recognized, explicitly, the difficulties arising from the existence of an international frontier and, implicitly, the doubtful legality of a single index. The division of the Geneva area into two distinct zones, with a different post adjustment for each zone, would be in contradiction with the philosophy of taking into account average expenditures.

80. She stated that in the view of the United Nations Legal Counsel the real problem of maintaining the status quo was in the fact that the General Assembly had asked for a change and the Commission was supposed to bring about that change. Although she did not agree, she could nevertheless consider as reasonable, the argument advanced by the ICSC consultant in 1995, that maintaining the status quo would not resolve the problem of inequality of treatment among duty stations - the issue raised by the General Assembly. She did not however consider as reasonable or legally valid the argument that the Commission must take decisions or make recommendations just because the General Assembly had formulated a request in a certain direction. She recalled that in its written comments ILO had stated that the request of the General Assembly was not justified. If the Commission did not accept the ILO arguments and felt that, in fact, there was inequity in treatment between staff in Geneva and those in other duty stations, then the question it must ask itself was if it would be justifiable to attempt to deal with that inequity by some approach that resulted in even more unacceptable inequity between staff working at the same duty station within the same organization and in a redefinition of the concept of

duty station that would run counter to the functional needs of the organizations.

81. Taking into account all the points made above, she concluded that in the present case maintenance of the status quo was the best solution.

82. The representative of ITU expressed support for the views of the Chairman of CCAQ and the other Geneva-based organizations. He noted that although increasingly staff members were paying more attention to organizations' advice regarding residency in France, there were practical reasons for some staff deciding to do so. For example, some French nationals had opted to have their children attend French schools, and in the process had foregone the benefit of the education grant. Were there any grounds to penalize that group of staff members by reducing their salaries? He drew attention to the enormous costs that would be associated with legal challenges and the added costs for administering a post adjustment system that would have become more complex. In view of that he felt that a cost/benefit study should be undertaken to see whether the potential savings would justify the cost of such a change. He noted that, in addition to the legal issues pointed out by the Legal Counsels, there were also administrative issues to be decided as well as outstanding technical issues to be resolved.

83. The representative of WIPO endorsed the views of CCAQ and those of the representative of the other Geneva-based organizations. Referring to the opinion of the United Nations Legal Counsel that the submissions from the Geneva-based organizations could be seen as pleas from interested parties rather than critical analyses to assist the General Assembly in finding a solution to a problem that undoubtedly existed, he noted that more respect could have been shown for the legal opinions of his colleagues from the Geneva-based organizations. He felt that the opinion of the United Nations Legal Counsel presented merely a broad outline of the legal issues. The United Nations Legal Counsel had not addressed many of the points raised by the legal counsels of the Geneva-based organizations. The representative of WIPO cited, as examples, the question of the legal status of staff residing in France and the assigned weight for out-of-area expenditures in post adjustment calculations for Geneva. In his view a single post adjustment index was not workable and in that regard felt that the ACPAQ recommendations were not fully satisfactory. He expressed his organization's appreciation for the visit of the Chairman of ACPAQ and two members of the ICSC secretariat to Geneva to consult with representatives of the Geneva-based organizations. He expressed the hope that the Commission would take a decision that, overall, would be beneficial on a long-term basis.

84. The representative of the United Nations expressed his Organization's appreciation of the steps taken by the Commission to consult with the Geneva-based organizations and to obtain their views on the matter. He saw the visit of the Chairman of ACPAQ and two members of the secretariat to Geneva on the matter as a sincere effort by the Commission to respond to the request of the General Assembly while taking into account the situation of the organizations in Geneva. As the post adjustment system could only be effective to the extent that it equalized the purchasing power of the salaries of staff worldwide, he requested the Commission to examine carefully the request of the Assembly with a view to correcting any imbalances in the system. He expressed understanding for the situation of those staff members who because of their nationality or contractual status with the organizations could not live in France and consequently could not avail themselves of goods and services in France. There was yet another group of staff who because of the need for visas had limited opportunity to go to France. In the light of all the legal, administrative and

technical difficulties that had come to the fore, he invited the Commission to make recommendations that were technically sound and legally grounded.

Discussion by the Commission

85. At the outset, the Commission expressed its sincere appreciation to the administrations of the Geneva-based organizations for the frank exchange of views they had held with the Chairman of ACPAQ and the secretariat, as well as for their cooperation in submitting their legal, administrative and technical concerns to the Commission in writing in an expeditious manner. The Commission was of the view that the information provided by the organizations was an integral part of its consideration of the General Assembly's request regarding the post adjustment at Geneva. In view of that, while the Commission has provided a summary of its discussion of the various points raised by the organizations in this part of the report, it has provided full texts of the comments submitted by the Geneva-based organizations regarding the legal, administrative and technical difficulties that would be faced by them if the current system were to be changed (annexes VIII-XIII). The detailed comments of the United Nations Legal Counsel on the various issues raised by the Geneva-based organizations are also annexed (annex XIV).

86. During the course of its examination of the views of the organizations and those of the United Nations Legal Counsel, the Commission noted that in addition to the two possible approaches to respond to the General Assembly requests it had identified in 1995, there were two other possibilities that had been considered. Consequently, the Commission was faced with four broad approaches outlined below which could be pursued:

(a) A single post adjustment index reflecting prices of goods and services in Geneva and the neighbouring areas of France;

(b) Two post adjustments, one for those living in Switzerland and the other for those living in the neighbouring areas in France;

(c) A single post adjustment index based on the comparison of prices of goods and services in Geneva with those applicable in Manhattan only;

(d) Maintain status quo.

The Commission decided to pursue its further consideration within the framework of the submissions from the organizations as well as the views of the Legal Counsel.

87. The Commission noted that all the Geneva-based organizations were in favour of the maintenance of the status quo, whereby the post adjustment at Geneva would continue to be calculated on the basis of prices of goods and services in Geneva only. That would be tantamount to ignoring altogether the fact that approximately one third of the Professional staff working in Geneva lived in France and were subjected to prices of goods and services at their places of residence. That would be in complete contradiction of the General Assembly's request in its resolutions 48/224 and 50/208 that the Commission ensure that place-to-place surveys conducted for all headquarters duty stations were fully representative of the cost of living of all staff working in the duty station. Furthermore, it would also be in contravention of the General Assembly's request in its resolution 50/208 that the Commission ensure equality of treatment with staff in other headquarters duty stations.

88. The above alternative also posed a serious legal difficulty insofar as the status of the staff members working in Geneva and living in France was concerned. From the information provided by some of the Geneva-based organizations it was evident that nationals of 153 countries were subject to visa formalities to enter France. Furthermore, those staff members living in France were not entitled to any protection under the Conventions on Privileges and Immunities similar to that enjoyed by their counterparts living in Geneva. Their residence in France was simply "tolerated".

89. In view of the above, the Commission considered that the maintenance of the status quo was not only against the intent of the General Assembly's request but was also not sound on legal grounds.

90. The Commission also noted the views of the United Nations Legal Counsel that the introduction of any of the alternatives under consideration, except the maintenance of status quo, might result in years of litigation before both Tribunals, and the cost and disruption caused by such litigation would need to be assessed against the cost reductions arising from the introduction of a new system. That was particularly so when transitional measures would most certainly be needed to ensure that the introduction of the new system did not violate acquired rights of staff.

91. As to the alternative involving the comparison of prices of goods and services in Geneva with those in Manhattan, the Commission noted that the proposal had not been discussed in great detail in the submissions from the organizations, although one organization had opposed it on the grounds that the present system was fair and equitable and took into account the fact of a national border. The alternative was also opposed by some of the organizations on the grounds that it was a system of rough justice, which was of doubtful validity.

92. While the Commission considered that it was an uncomplicated way of dealing with a difficult problem in a fair way, it would create some problems of perception. Furthermore, it would also raise the issue of whether it was appropriate to have in place two separate procedures - one comparing New York with Geneva and the other comparing New York with the rest of the world. The Commission recalled in that regard that the United Nations Legal Counsel had noted in his opinion that the exclusive use of Manhattan prices would result in raising the base of the system and that would have worldwide implications since all duty stations were measured by reference to the base. Of course, the Manhattan index could be used just for Geneva but the fact that it was used in one place might lead to demands that it be used on a universal basis.

93. The Commission next turned to the possibility of implementing two separate post adjustments for staff working in Geneva; one for those living in Geneva and the other for those living in France. The Commission noted that the organizations objected to that approach on the grounds that it would comprise an inequality between the treatment of staff assigned to Geneva and those assigned to other duty stations inasmuch as a single post adjustment covered the entire area and enabled staff members to decide whether to live in an expensive or a less expensive area. It was also argued that the effect of a dual track post adjustment would be that an employer in one country would pay salaries based on costs in another country, thus not respecting the sovereign differences of States. It was also felt that the post adjustment was not an appropriate mechanism for dealing with the peculiar geographic nature of Geneva as a duty station. The organizations were also of the view that it would violate the

principle of equal pay for equal work and raise the problems of verifying the actual residence of staff.

94. On the other hand, the United Nations Legal Counsel considered that a system that looked at prices based on the actual place of residence of a staff member was acceptable from a legal point of view given the difficulty of attempting to establish a single post adjustment across national boundaries. He was of the view that the fact that over one third of staff lived in France appeared to indicate that an index that ignored that fact could not serve the purpose of ensuring that the purchasing power of staff in Geneva was equivalent to those at the base of the system. The Legal Counsel further indicated that since the purpose of the post adjustment was to equalize purchasing power of staff at all duty stations, a dual system would not be found to violate the principle of equal pay for equal work since it attempted to ensure that, even if staff resided in an area that was across a national boundary they had emoluments of similar purchasing power to those at the base, which was basic to any worldwide system of salary fixation.

95. The Legal Counsel also expressed the view that some organizations might have to amend their internal rules to implement such a dual post adjustment mechanism scheme, and its introduction should be delayed to enable the organizations to effect such change. He also considered that a system that used data based on actual place of residence would seem reasonable and considered that the Administrative Tribunals were unlikely to find that such a system violated the rights of staff who had chosen to live in France, since it simply recognized the effect on purchasing power of such a choice.

96. Turning to the issue of the single post adjustment index for Geneva based on the prices of goods and services in Geneva and the border areas of France, the alternative that the General Assembly had requested the Commission to implement, the Commission noted the legal objections to that approach by the organizations. The organizations were of the view that the utilization of data from France was improper in law because the duty station was Geneva and not France, and that meant that the place of assignment was Geneva and not the place where staff lived because many staff members did not have the right to reside in France. That conclusion was reached either by consistent interpretation of the organizations' headquarters agreements or because of definitions of the duty station in their staff regulations or rules. It was also argued that a post adjustment that included data from France violated the right of staff to choose where they wanted to live, and the collection of such data would require changes to the legal texts that defined a duty station prior to implementation of any decision for a single post adjustment. The Geneva-based organizations also considered that in law, the duty station could not be extended to areas in France, since France had neither ratified the Convention on the Privileges and Immunities of the Specialized Agencies nor entered into headquarters agreement with the organizations so as to enable them to provide legal protection to their staff.

97. The United Nations Legal Counsel, however, was of the view that, bearing in mind the basic purpose of the post adjustment system, there was no particular reason why the measurement of actual expenditures of staff assigned to the Geneva duty station had to be limited to Geneva only, since what was being measured was the consumption patterns of staff residing in the duty station area to ensure equality of purchasing power. He considered that it was hard to see why an index could not look at the reality of staff expenditures, which in the present case was that over one third of the staff lived and spent money in France. He added, however, that the arguments put forward by the Geneva-based

organizations had some merit and that it was difficult to predict how the Administrative Tribunals would assess the competing arguments should the system be challenged. He expressed the view that any legal assessment was a matter of judgement and considered that the definition of the extent of a duty station did not constitute a legal bar taking into account actual expenditure by a substantial proportion of staff who had voluntarily chosen to reside within the duty station area without the protection of the Convention on the Privileges and Immunities of the Specialized Agencies.

98. The United Nations Legal Counsel stated that if the single post adjustment alternative was pursued, the Commission should recommend that the General Assembly give the organizations the time they needed to amend the texts of their relevant staff regulations and/or rules.

99. On the basis of its consideration of the views of the organizations and the United Nations Legal Counsel as outlined above, the Commission concluded that there were difficulties with all of the alternatives considered. The Commission recalled, however, that the legal difficulties associated with the single post adjustment based on prices in Geneva and the neighbouring areas of France, as well as those associated with the dual track system, had been brought to the attention of the General Assembly in 1995, albeit not in as much detail as had been done during the course of the current review. After having considered those concerns, legal issues and difficulties, the Assembly had directed the Commission to implement a single post adjustment for Geneva that would take into account the fact that staff resided not only in Geneva but also in France.

Decisions of the Commission

100. The Commission decided to report to the General Assembly that:

(a) Since its report to the General Assembly in 1995 regarding the issue of the Geneva post adjustment, a number of new facts had emerged, and, in view of that, the Commission had undertaken a comprehensive study of the entire matter and had identified four possible approaches to respond to the Assembly's request;

(b) None of the approaches that the Commission had examined was without legal problems;

(c) While it was technically possible to calculate a single post adjustment index based on prices of goods and services in Geneva and the neighbouring areas of France, the following issues must be borne in mind before pursuing such a course of action:

(i) As with the other alternatives examined, there were a number of difficulties of a legal, administrative and technical nature associated with that approach. Implementation of results based on that approach for Geneva was not without risks;

(ii) Organizations in Geneva had indicated that the approach was incompatible with their staff regulations and rules, and they would need to have an opportunity to discuss it, as well as other legal and administrative matters, at the level of their governing bodies before implementing the Commission's decisions in that regard;

(iii) If some of the Geneva-based organizations decided not to apply the single post adjustment based on the above approach, it would be tantamount to a break-up of the common system;

(iv) Since it was anticipated that the approach would result in lowering the post adjustment at Geneva, some transitional measures would need to be applied;

(v) Application of the post adjustment resulting from the above approach might be appealed by staff at Geneva before the Administrative Tribunals;

(vi) While the application of the revised post adjustment based on the above approach would result in some savings in the future when transitional measures were over, the net savings could not be assessed at the present stage since the cost of litigation before the Administrative Tribunals was not known. In view of that, it might be advisable to undertake an analysis of net savings resulting from the above approach;

(vii) Geneva-based organizations would require changes to their staff regulations that defined the duty station before the single post adjustment based on the above approach was implemented;

(viii) Bearing in mind the above, it was not possible to implement the single post adjustment for Geneva by 1 January 1998, as requested by the Assembly in its resolution 51/216.

101. Following a review of the above information, if the General Assembly decides that the approach of a single post adjustment for Geneva based on prices in Geneva and the neighbouring areas of France should be pursued, it should be noted that the Geneva-based organizations should be given time to effect changes in their staff regulations concerning the definition of the Geneva duty station to include the neighbouring areas of France. In view of this, the General Assembly may wish to request the Geneva-based organizations to bring the above matter to the attention of their governing bodies.

102. In view of what has been stated in paragraph 100 (c) above, the General Assembly may wish to consider, if deemed appropriate, requesting the Commission to carry out a study of the savings that would be realized from the implementation of a single post adjustment for Geneva, expenditures associated with transitional measures and estimated costs of litigation before pursuing the above-mentioned approach further.

Chapter V

REMUNERATION OF THE GENERAL SERVICE AND OTHER LOCALLY RECRUITED CATEGORIES

A. Methodologies for surveys of best prevailing conditions of employment at Headquarters and non-Headquarters duty stations

103. The Commission reviewed the methodologies for surveys of best prevailing conditions of employment and the issue of the non-pensionable component on the basis of recommendations of a Working Group established by it for that purpose. The Group consisted of three members of the Commission and three representatives of the organizations and was expanded for the review of the non-pensionable component with three members designated by the United Nations Joint Staff Pension Board (UNJSPB), representing the Member States, administrations and participants. Two representatives of each staff organization (i.e., FICSA and CCISUA) were invited, but those organizations decided not to participate. The ICSC secretariat acted as convenor and the secretariats of CCAQ and UNJSPB participated, as required.

104. In 1982, the Commission adopted the survey methodology for Headquarters duty stations, following which reviews took place at the completion of every survey round, in 1987 and 1992. It promulgated the non-Headquarters methodology in 1984 and subsequent reviews were undertaken in 1987 and 1993. Following the reviews of both methodologies in 1992 and 1993 (also on the basis of a working group specifically established for that purpose), staff organizations submitted position papers in which they outlined their observations and reservations with regard to the methodologies. The Commission subsequently undertook a preliminary review of the survey methodology in 1994 but noted that a comprehensive review should only be undertaken upon completion of the round of surveys at Headquarters duty stations, which was then in progress. The General Assembly endorsed that decision. In section II of its resolution 51/216, the Assembly noted the preparations undertaken for the 1997 review of the survey methodologies and requested the Commission, inter alia, to resolve, to the extent possible, inconsistencies between the General Service methodology (based on the Flemming principle) and the one applied for the Professional category pursuant to the Noblemaire principle. The review included an analysis of the two principles.

105. In its consideration of the principles, the Commission also examined the issue of overlap in remuneration between the Professional and the General Service categories. In the review of the methodologies, the Commission addressed in particular the need for a broad cross-section of economic sectors, including the national civil service and other public/non-profit employers. Also included in the review were criteria for the differentiation of labour markets at non-Headquarters duty stations, the benefit utilization criteria and the interim adjustment process. The Commission also reviewed a number of methodological issues, which are detailed in the report of its forty-fifth session. For purposes of clarity and brevity only issues with broad implications are included in the present document. Accordingly, for the same reasons, while the views of the organizations are provided in full in the Commission's report of its forty-fifth session, they have been abbreviated here. As regards the non-pensionable component, the Commission considered the criteria for establishing the component, the elements that should be considered pensionable/non-pensionable and the levels of the ceiling and threshold. The

discussion and decisions of the Commission are reflected in the section following the review of the survey methodologies.

Views of the organizations

106. The Chairman of CCAQ recalled that General Assembly resolution 51/216 expressed the need to ensure representation of the public sector in determining best prevailing conditions. Although the question of whether mandatory representation of the public sector was consistent with the focus of the Flemming principle could be subject to discussion, CCAQ felt that the credibility with Member States of United Nations salaries for national staff would be strongly enhanced with the inclusion of public sector employers. In that context, he noted that employers were already drawn from public/non-profit sectors in almost every survey, but that often national civil services might not be competitive in the local labour market. Public sector employers could also be drawn from the embassy community and other international organizations and could include central banks, parastatal employers, non-governmental organizations, educational institutions and foundations. Regarding the relationship between the Noblemaire and Flemming principles, CCAQ fully supported the view that an overlap between General Service and Professional salaries did not indicate a flaw in either principle or inconsistency in their application. He further noted that volatile exchange rates might affect comparisons between Professional and General Service pay levels.

107. The Chairman of CCAQ noted that the recommended differentiation of labour markets for the non-Headquarters methodology was a further refinement of the 1993 review. The designation of duty stations where either 5, 7 or 12 employers would be retained in the comparison of salary data to current United Nations salaries would provide greater equity among duty stations with labour markets of varying degrees of sophistication. It could not be maintained that the retention of five employers in duty stations as diverse as Luanda and Ankara resulted in a consistent positioning of United Nations salaries in these respective markets. In the past, the organizations had sought to limit data collection in view of the administrative burden it represented but developments in the process of conducting salary surveys had strengthened the system's capacity to collect a wider range of employer data. While supporting increases in the number of employers to be surveyed and retained as well as in the minimum number of office staff, CCAQ cautioned that it was imperative that a phased approach or other transitional measures be applied during the next round of surveys.

108. The representative of the United Nations agreed that overlap was not in and of itself a unique phenomenon and while the different labour market orientations of the Noblemaire and Flemming principles could at different points in time affect the degree of overlap in specific locations, these variations did not indicate flaws in either principle, or inconsistencies in application. He stated that the inclusion of a broadly defined public sector appropriately maintained the twin objectives of the Flemming principle of reflecting both the "best" and "prevailing" conditions of local labour markets. In the area of harmonization of the methodologies, he felt that the substantive convergence in the Headquarters and non-Headquarters methodologies would promote greater consistency in the evaluation of labour market data. In the context of public sector representation, the United Nations believed that that did not mean that in all surveys the national civil service must be included and supported the position that public sector employers could be drawn from a variety of national institutions, international organizations and parastatal companies, and should not necessarily include the national civil service.

Discussion by the Commission

109. The Commission acknowledged the high level of technical expertise of the Working Group. The membership included representatives of the Commission, the administrations and the secretariat of the Commission. Staff had been invited to participate but had declined. The Commission was informed that CCISUA had requested that, pending the outcome of discussions with the Commission to resume participation, decisions regarding the survey methodologies be postponed until the summer session. In view of its work programme and deadlines, however, the Commission felt that such a postponement was not feasible.

110. As regards the conceptual issues on which the survey methodology was based, the Commission recalled General Assembly resolution 51/216. In reviewing the current formulation of both the Flemming and Noblemaire principles, the Commission noted that the focus of the Noblemaire principle was on the highest paid national civil service and that the United States federal civil service had been the comparator civil service under the principle since the earliest days of the United Nations. On the other hand, a number of formulations and reformulations of the principle that guided salary setting for locally recruited staff had been made since the earliest days of the United Nations both before and after the initial formulation of the Flemming principle in 1949. The formulation of the pay setting principle had moved from "best rates" in the earliest days of the United Nations to "best prevailing local rates" in the initial Flemming formulation to "best prevailing local conditions" under various formulations of subsequent salary reviews in the 1950s, 1960s and 1970s. The current formulation of the Flemming principle is shown in paragraph 26 of annex XV, which also provides an evaluation of the principle. Subsequent review groups emphasized a number of aspects of the Flemming principle, as follows:

(a) Conditions of service other than salaries should also be evaluated and compared;

(b) Both the "best" and "prevailing" aspects of the local labour market should be considered in establishing local conditions;

(c) The selection of the "best" aspects of conditions of service of various portions of the local labour market to reflect the "best of the best" conditions of service of the labour market was not an appropriate formulation of the Flemming principle.

111. The Commission noted that the Noblemaire principle had a universal focus while the Flemming principle focused on local conditions of service. It was therefore difficult to compare a methodology that needed to be responsive to local labour market conditions, which could at times be volatile, with a methodology that needed to respond to the application of uniform conditions of service on a global basis. The reference labour market of the Noblemaire and Flemming principles was essentially different, the former being linked to the public sector of one Member State and the latter linked to the overall labour market of individual Member States. In view of the linkage of the Noblemaire and Flemming principles to different labour markets, it was to be expected that the resulting measurement of conditions of service would be different. The Commission did not consider that such differences represented inconsistencies in the two methodologies and noted that both methodologies were based on Article 101 of the Charter of the United Nations, which required staff to be recruited with the highest standards of efficiency, competence and integrity. In order to achieve those standards the basic premise of the Flemming principle was competitiveness with employers in the local labour market to recruit staff

of equally high calibre and qualifications for similar work. Since the same goal applied under the Noblemaire principle but the defined labour market was worldwide the competitiveness must be related to the civil service of the country with the higher pay levels for reasons that have been described on numerous occasions in previous reviews of the Noblemaire principle. The Commission considered that the Flemming principle, while reformulated on various occasions, had been reaffirmed by numerous groups. Accordingly, the Flemming principle would seem to have served the needs of the organizations.

112. The Commission noted that the current comparator under the Noblemaire principle, according to its own measurements, was on average 30 per cent below its own reference labour market, the United States non-federal sector. It was to be expected, therefore, that the application of the Flemming principle even with the Noblemaire comparator country would yield results that would be significantly different from those produced by the application of the Noblemaire principle. If there were no gaps between salary levels of the United States federal civil service and its reference labour market (the United States non-federal sector), then one might expect that the Flemming and Noblemaire principles would produce results that were consistent. Even in that event, however, there would be no assurances that the two labour markets, i.e., under the Flemming and Noblemaire principles, would evolve in similar fashion.

113. The Commission considered that there was a degree of overlap between Professional and General Service salaries that was occurring naturally and should not necessarily be eliminated. Care should be taken, however, to ensure that the degree of overlap would not interfere with salary and job relativities that were generally deemed acceptable. The Commission further noted that many employers, including those in the national civil service and other public sector employers, maintained a degree of overlap between the salaries paid to newly recruited Professional staff in the first several years of service and clerical staff with extensive experience and many years of service at the end of their career.

114. The overlap phenomenon was restricted to approximately half of the Headquarters duty stations and a very small number of non-Headquarters duty stations. In the former the overlap had diminished in the last round of surveys, primarily because of survey results. The Commission did not consider it desirable to place an artificial cap on General Service salary levels in order to address the issue, since that would represent a departure from local conditions.

115. Some members felt strongly that the overlap phenomenon was explained by an improper application of the Noblemaire principle, which had resulted in an extended freeze of Professional salaries. Other members considered that it might be explained by too generous application of the Flemming principle. In that regard, the Commission noted that CCAQ stressed that currency fluctuations also played a role in the overlap issue. In either event a periodic review of both methodologies to ensure their proper application would seem to continue to be necessary. Meanwhile, the Commission stressed that it would wish to be kept informed of the degree of overlap at the time of each survey.

116. In its review of the Headquarters methodology, the Commission, in order to broaden the basis on which to measure local market conditions, considered the inclusion of the national civil service and related criteria concerning the selection and retention of employers. In that regard, the Commission recalled that the General Assembly, in its resolution 51/216, had requested it to study the feasibility of increasing the weight of public sector employers in salary

surveys. Some members agreed with the position put forth by CCAQ that that did not imply that the national civil service should be included. Since the conditions of service of national civil services were not necessarily competitive, their inclusion might constitute a violation of the Flemming principle. Other members felt that the civil service constituted a prevailing practice and should therefore be included. Inclusion of the national civil services would also serve to bring the application of the Flemming principle closer to that of the Noblemaire principle, and thereby address the Assembly's concern with regard to the inconsistency between the two principles.

117. Noting that the methodology for Headquarters duty stations, established in 1982, already called for the inclusion of the public service or parastatal institutions, most members favoured including the national civil service, provided that other criteria, such as the need for structured pay and classification policies, would be met. In cases where the remuneration of the national civil service was significantly below those of other employers, the methodology already provided for bringing extreme salary levels to the attention of the Commission. For non-Headquarters duty stations the Commission noted that the inclusion of the national civil service in non-Headquarters surveys might be problematic. It further noted that in its request to the Commission to study the feasibility of increasing the weight of public-sector employers in the salary surveys, the General Assembly had specifically referenced Headquarters duty stations. Accordingly, while the same public sector requirement would apply to both methodologies, the Commission recognized that national civil services at non-Headquarters locations might not meet the inclusion requirements of the methodology, necessitating a greater reliance on other public sector employers.

118. The Commission agreed that, in order to obtain a broader representation of the local labour market, a specific proportion of surveyed employers should represent the public sector and that a ceiling should be established for individual subsectors. The Commission further considered a breakdown of economic sectors, as shown in annex XVI, as the basis for the requirement for a broad representation of economic sectors for both Headquarters and non-Headquarters duty stations.

119. The Commission acknowledged that within the duty stations covered by the non-Headquarters methodology the degree of sophistication of labour markets varied widely. In 1993, the Commission took a first step to address this issue by revising the employer retention criteria (from 5 to 7) for 15 selected duty stations that possessed both a large population of United Nations staff and were characterized by diverse/dynamic labour markets.

120. The Commission considered that criteria to determine the appropriate number of employers to retain for a more accurate reflection of local conditions should measure both the dynamism of the local labour market and the size of the local United Nations staff population. The recommendations put forward by the Working Group established such criteria in the context of broadening the base of comparison.

121. The Commission also reviewed the utilization criteria for the quantification of fringe benefits. To ensure that the requirement was met that a majority of staff of an employer must utilize a benefit so as to allow quantification, the Commission considered increasing from 50 per cent to at least 75 per cent the percentage of staff eligible for the benefit.

122. In discussing the interim adjustment procedures, the Commission expressed its satisfaction with the six-month rule and considered the inclusion of mini-surveys in the existing interim adjustment mechanisms. With regard to the application of the uniform reduction factor of 10 per cent at all Headquarters duty stations to the interim adjustment, the Commission recalled that prior to the 1992/93 revision of the methodology, duty stations had different reduction factors ranging from zero to 19 per cent, based on local conditions. These factors had originally been created to take into account taxation differences but currently the main purpose was to ensure that adjustments would not move ahead of the market. Organizations had expressed concern that the introduction of a common factor had resulted in some adjustments that did not necessarily follow the local market. In view thereof, the Commission considered that it would revert to a more flexible approach, whereby duty stations could apply a reduction factor relevant to the conditions at the duty stations, provided that the adjustment would not exceed 90 per cent.

123. The Commission reviewed the adherence of organizations to the survey schedule in the last round of surveys and discussed measures to encourage improvements in that regard. As to the provision of survey data to non-participating parties, the Commission considered that the issue of confidentiality was of prime importance to employers and the Commission, in fact, committed to such confidentiality in the letter of the Chairman to invite employers to participate. In view thereof it was felt that data would be made available to non-participating parties only after the data analysis phase had been completed. That coincided with the time that data was made available to the Commission.

124. The Commission also considered the use of salary data for surveys. At Headquarters stations the survey data was based on average salary data, whereas at non-Headquarters duty stations the standard was the collection of minimum and maximum salary data. The Commission considered that both approaches had their advantages and disadvantages, but that it would be premature to exchange one method for the other. Consequently, it was felt that a test comparison at the end of the next survey round might provide a better insight.

125. The Commission took up the Headquarters schedule of surveys, as well as the issue of the implementation date for the non-Headquarters survey methodology. It noted the desire of the General Assembly to be apprised of the review of both survey methodologies and considered that, taking into account the preferences of the organizations, the schedule for the fifth round of surveys at Headquarters duty stations would commence in 1999. In view of the large number of duty stations to be surveyed under the non-Headquarters methodology and the subsequent requirement for a well-defined survey schedule, the Commission considered proposals for appropriate implementation dates. It was felt that should there be no major reservations on the side of the Assembly, the Chairman, by delegated authority, could promulgate the non-Headquarters methodology with an effective date of 1 January 1998.

Decisions by the Commission

126. With regard to the Flemming and Noblemaire principles and the issue of overlap between Professional and General Service salaries, the Commission concluded:

(a) That the inconsistencies between the Flemming and Noblemaire principles were a direct result of the different objectives of the two principles. Since the local labour market represented largely private sector employers it should not be expected that a high degree of consistency would prevail between various aspects of the two methodologies;

(b) That an overlap between Professional and General Service salaries was not a problem in and of itself, as long as it did not exceed generally acceptable levels. The Commission would, however, keep the situation under review, inter alia, by ensuring that the overlap between Professional and General Service salaries at each of the seven Headquarters duty stations would be addressed in the respective survey reports.

127. With regard to the criteria for employer selection and benefit quantification, the Commission decided:

(a) To approve the sectors shown in annex XVI and that:

(i) The public/non-profit sector, including the national civil service, should be represented by at least 25 per cent of the retained employers;

(ii) No individual subsector of the private sector should be represented by more than 25 per cent of the retained employers;

(b) To increase the criterion for utilization of a benefit to allow quantification of a benefit to at least 75 per cent of staff eligible for the benefit.

128. With regard to the differentiation of labour markets at non-Headquarters duty stations, the Commission decided to establish three categories of non-Headquarters duty stations to determine the number of employers to retain for the establishment of local conditions of service, as follows:

(a) Category I: duty stations where 12 employers would be retained in the final analysis;

(b) Category II: duty stations where 7 employers would be retained in the final analysis;

(c) Category III: duty stations where 5 employers would be retained in the final analysis.

129. With regard to the interim adjustment procedure, the Commission decided that:

(a) The mini-survey should be added to the existing interim adjustment mechanisms as the method most likely to yield accurate results. That mechanism, however, would only be applied at the specific request of the duty station;

(b) The percentage adjustments to the net salary scale should be set at each Headquarters duty station at a level most appropriate to the local conditions, provided that the adjustment would not exceed 90 per cent.

130. The Commission also decided:

(a) To implement the revised non-Headquarters methodology as of 1 January 1998, barring major reservations by the General Assembly;

(b) To continue to apply in the next round of Headquarters surveys the current methodology using average salary data and the 75th percentile method;

(c) To test an approach other than that specified above in the next round of Headquarters surveys, that is, use of the minimum/maximum salaries approach.

131. As noted in paragraph 105 above, the Commission also made a number of decisions on other elements of the methodologies. The discussion and subsequent decisions are shown in the Commission's report on the forty-fifth session. The above decisions have been incorporated in the revised methodologies, which have been issued as Commission reports.

B. Non-pensionable component

132. The Commission considered the recommendations of the Working Group with regard to the criteria for establishing the non-pensionable component and which elements should be considered pensionable and non-pensionable in the determination of the component, as well as the levels of the ceiling and threshold.

Views of the organizations

133. The Chairman of CCAQ noted that previous decisions regarding the ceiling on the non-pensionable component relied on the exercise of judgement and a recognition of the need for balance. He agreed that the main criteria for the determination of pensionability should be based on the regularity, recurrence and predictability of benefits and allowances paid to employees in cash. CCAQ supported the development of a list of remuneration elements commonly found in surveyed employers that were paid in cash in order to define further the pensionability of remuneration elements. In concluding, CCAQ considered that any recommendation that would result in lower pensionable remuneration levels than those currently in place would require transitional measures that would maintain current levels until future adjustments resulted in higher pensionable remuneration levels.

134. The Secretary of UNJSPB, speaking on behalf of the UNJSPB delegation to the Working Group, noted the unanimity that was reflected in the recommendations of the Group as a result of the thorough and constructive exchange of views. Availability of extensive salary survey data had enabled the delegation to prepare suggestions for modifying the current basis for determining which allowances and benefits should be considered pensionable and which should not. The delegation's main focus was to establish greater compatibility between the approach to determining the non-pensionable component with the current income replacement method for determining pensionable remuneration for General Service staff. In that regard, he noted that the 1958 Expert Group on Pensionable Remuneration had stated that the principle underlying any comprehensive retirement scheme should be such as to guarantee to participants reaching the age of retirement a benefit on which they might support themselves under conditions not too markedly different from those enjoyed during their closing years of service. He considered that the recommendations of the Working Group represented a distinct improvement over the current arrangements and harmonized the process of determining the non-pensionable component as between Headquarters and non-Headquarters duty stations.

Discussion by the Commission

135. The Commission noted that the principle underlying any comprehensive retirement scheme should be such as to guarantee at retirement age a benefit that would provide retirees with living conditions not too markedly different from those enjoyed during the final years of service. With the introduction of the income replacement approach to General Service staff in 1994, the criteria for establishing the non-pensionable component needed to be re-examined. The Commission noted that the parameters for the non-pensionable component were the same before and after the application of the income replacement approach to General Service staff. The cap of 25 per cent in conjunction with the income replacement approach inevitably led to a lower proportion of income after-service vis-à-vis in-service income than would be considered desirable under the income replacement approach.

136. The Commission considered that the non-pensionable component would always be necessary to reflect adequately local employer practices. Certain elements should not, however, be included in the calculation of the pensionable remuneration. On the other hand some of the non-taxable elements, especially those in cash, that were currently considered to be non-pensionable, should be considered pensionable. The Commission further noted that remuneration elements paid in cash should be the primary determinant of pensionability and examined which specific cash payments should be considered pensionable. An overview of those elements is shown in annex XVII.

137. The Commission recalled that the current level of the ceiling (25 per cent of net salary) was based on judgement. Those duty stations with a large non-pensionable component currently would benefit from a reduction of the ceiling since a lesser proportion of income would be considered non-pensionable and would improve the relationship between income while in-service and income after-service.

138. With regard to the current threshold (10 per cent of net salary), the Commission noted that it resulted in different treatment of staff between Headquarters and non-Headquarters locations. At Headquarters locations when the non-pensionable elements added up to 14 per cent of net salary, the non-pensionable component of 4 per cent would be created. However, in the case of non-Headquarters locations, the non-pensionable component would need to be at least 15 per cent of net salary before a 5 per cent component could be established.

Decisions of the Commission

139. The Commission decided that:

(a) The main criteria for the determination of pensionability should be the regularity, recurrence and predictability of benefits and allowances paid to employees in cash and that, on that basis, the remuneration elements shown in annex XVII should be considered pensionable;

(b) The ceiling for the non-pensionable component should be reduced to 20 per cent of net salary from the current amount of 25 per cent;

(c) The threshold for the establishment of the non-pensionable component should be the same for both Headquarters and non-Headquarters duty stations, namely, 10 per cent of net salary, with no established minimum;

(d) Transitional measures would apply as usual, i.e., gross pensionable salaries would be maintained if found lower as a result of any of the above recommendations until such time as future revisions based on either a comprehensive survey or an interim adjustment produced gross pensionable salaries that were equal to or higher than those in effect on 31 December 1997.

140. The Commission noted that the Standing Committee of the Pension Board, at its June/July session in 1997, concurred with the above decisions of the Commission.

C. Review of the basis for the dependent children's allowance

141. As part of the review of the General Service survey methodologies, the issue of the basis for the dependent children's allowance arose in the Working Group established by the Commission to assist it in its review. The Working Group noted that that item was not part of the current survey methodologies and proposed that the item be placed on the Commission's work programme for a preliminary consideration at its forty-fifth session (April-May 1997).

142. The basis and methods for establishing dependency allowances for both the Professional and higher categories and the General Service and related categories were initially reviewed by the Commission in 1982. It concluded that the basis for the calculation of the children's allowance for the General Service and related categories should reflect a combination of local practice and social benefit policy. With regard to local practice, the Commission concluded that it should be determined as the sum of:

(a) Amounts paid in respect of dependent children by the Government, the employers or some other entity, according to existing legislation;

(b) Tax abatement for dependent children;

(c) Amounts paid by surveyed employers over and above any amounts paid according to local legislation.

143. It also agreed that a floor amount for the children's allowance should be calculated for each duty station based on 3 per cent of the mid-point of the local salary scale. That percentage was determined based on the average of local practices at duty stations that had a local practice in that regard. At duty stations where the children's allowance was not payable according to local practice or where local practice produced an amount below the floor amount, the floor amount would be paid in respect of each dependent child up to six children. At duty stations where the local practice amount was higher than the floor amount, the local practice amount would be paid.

Views of the organizations

144. CCAQ noted that, in some countries, the allowance paid by the United Nations organizations to General Service staff could be significantly higher than would be justified based on local practice. In the context of the current work programme of ACC dealing with family policies, it would seem contradictory to reconsider the social benefit aspect of the allowance.

145. CCAQ emphasized that the United Nations organizations' social policy considerations required that the establishment of the floor formula continue to be based on the average practice of a large number of countries, including both

non-Headquarters and Headquarters locations. That matter should not be incorporated into the survey methodologies but should continue to be treated separately and be viewed in the light of the social policies of the organization. CCAQ noted that in updating the formula to reflect the average of local practices, the floor amount would be reduced from its current 3 per cent level to 2.5 per cent. CCAQ considered that transitional measures should apply to ensure the maintenance of current levels of the children's allowance.

Discussion by the Commission

146. The Commission noted that the children's allowance for General Service staff continued to be established on the basis of either local practice or social benefit policy. It considered that the issue at hand was the reasonable level of the allowance in the context of social benefit policy. It recognized that various initiatives of the organizations with regard to family and work issues would form the context in which the item was to be addressed. In that regard, some members of the Commission considered that any modification that reduced the allowance was not appropriate at the present time.

147. Other members of the Commission expressed the view that the basis for the allowance should be local practice. They considered that the current method of calculating the allowance created income inequity between various levels of General Service staff. As a part of local practice determinations, they considered it necessary to take into account recruitment and retention difficulties.

148. While the Commission viewed the item as being inevitably linked to the survey methodologies and, to a significant extent, local practice, other elements would also need to be reviewed, such as the number of children for whom the allowance was paid. The Commission did not consider that it was in a position to address all relevant issues at its current session.

149. The Commission noted, however, that a considerable number of years had passed since the floor formula had been set in 1982. Accordingly, it would be expected that a review of the current 3 per cent level would be required. Based on a calculation equivalent to that of 1982, the revised floor formula should be 2.5 per cent of the mid-point of the local salary scale.

Decisions of the Commission

150. The Commission decided that:

(a) The "social benefit"/local practice approach to the determination of the children's allowance for General Service staff should be maintained;

(b) The methodology for the determination of the dependency allowances for General Service staff should not be incorporated into the survey methodologies;

(c) The floor formula should be revised to 2.5 per cent from the current 3 per cent of the mid-point of the local salary scale;

(d) General Service children's allowance amounts in effect as at 31 December 1997 would continue in effect until the scale of net salaries was revised as a result of either a comprehensive General Service salary survey or an interim adjustment with effect from 1 January 1998;

(e) On the occasion of an adjustment of the General Service salaries resulting from either a comprehensive salary survey or an interim adjustment, the revised floor formula in subparagraph (c) above would be applied;

(f) If the children's allowance based on subparagraph (e) above were equal to or higher than that in effect on 31 December 1997, then the revised children's allowance would be used. However, if the children's allowance based on subparagraph (e) above were lower than that in effect on 31 December 1997, then the latter would continue to be used until the procedure in subparagraph (e) or the calculation based on local practice produced a children's allowance that was equal to or higher than that in effect on 31 December 1997;

(g) It would place the item on its 1999 work programme for further review.

Chapter VI

CONDITIONS OF SERVICE APPLICABLE TO BOTH CATEGORIES OF STAFF

A. Education grant: review of the methodology for determining the level of the grant

151. In 1992, the Commission approved the revised methodology for determining the level of the education grant, as reflected in its eighteenth annual report.[7] At the same time the Commission agreed that the revised methodology would be reviewed in 1995 in the light of experience in its application. In section IV of its resolution 47/216, the General Assembly endorsed the revised methodology reported by the Commission and requested ICSC to report to the Assembly at its fifty-first session on the operation of the education grant on the basis of the revised methodology. The review of the methodology initially planned for 1995 was postponed by the Commission to 1997 owing to competing priorities. As part of the latest review, the following issues were identified for consideration:

(a) Capital assessment fees. The manner in which the methodology should account for significant one-time payments levied by schools;

(b) The boarding element:

(i) Updating procedure to be used for the flat rate for boarding;

(ii) Treatment of boarding expenses in cases where the educational institution does not provide boarding;

(c) Boarding element at designated duty stations. Updating procedure and the relationship of this element to the flat rate for boarding;

(d) Trigger point for an adjustment of maximum allowable expenses. Procedure to identify currency areas which require an adjustment in the level of the maximum allowable expenses;

(e) Allowable items of expenditure and the currency of payment. Degree to which organizations maintain the same practice;

(f) Exceptional situations. Procedure for handling exceptional situations.

Views of the organizations

152. CCAQ concurred with the broad conclusions contained in the documentation before the Commission, and in particular the affirmation that the methodology as a whole functioned adequately. CCAQ underlined the sustained efforts organizations had made to provide full and complete claims data for the biennial reviews of the level of the grant. Organizations had the following comments on some of the specific issues raised as part of the latest review:

(a) Allowable items of expenditure. In 1990, CCAQ had noted some disparities in organizations' practices in that regard although a number of organizations had made efforts to assure greater harmonization. CCAQ did not consider that the discrepancies were major in nature; nevertheless the organizations would be surveyed with a view to ascertaining the extent and nature of the disparities and whether further harmonization was desirable;

(b) Expansion of the collection of fee data. CCAQ supported the proposal that data on school fees be collected at the secondary level in duty stations in the United States dollar area/outside the United States where there were a large number of international staff educating their children;

(c) Capital assessment fees. CCAQ informed the Commission that the organizations had agreed to reimburse the one-time building fee levied by schools on an interest-free loan basis by advancing it to the institution in question or, if that were not possible, to the staff members in question. In cases where such fees were not reimbursable and would result in severe financial hardship for staff members with children attending schools at the duty station, CCAQ supported the proposal that the organizations and staff share the cost of these one-time fees on the same basis as allowable expenses. If such an arrangement resulted in staff expenditures beyond the maximum allowable expenses, the Chairman of the Commission could exceptionally increase the maximum allowable expenses;

(d) Boarding element. CCAQ fully supported the proposal to adjust the flat rate by the movement of the relevant consumer price indices for the currency areas. Organizations considered that in cases where boarding was not provided by the school or university, but rather by a separate boarding institution certified by the school, the amount of the grant per year should equal 75 per cent of the sum of the expenses for attendance and board up to the maximum admissible educational expenses within the overall maximum for the currency area;

(e) Boarding element at designated duty stations. CCAQ supported the current proposals, namely:

(i) For a realignment of the additional flat rate in those cases where the 1989 relationship had substantially changed;

(ii) For an adjustment of the levels on the same date and by the same percentage as the normal flat rate. The additional costs associated with such measures would not be significant because of the relatively few numbers of eligible staff;

(f) Adjustment process. The issue of the adequacy of the sample for triggering increases had been a preoccupation of CCAQ in each of the three reviews of the level of the grant under the methodology, since in currency areas with a small number of claims the trigger point of 5 per cent tended to be more easily reached than in currency areas with a much larger number of claims (such as Swiss franc and United States dollar areas). To deal with that phenomenon as well as to respond to organizations' call for simplification, two approaches were suggested:

(i) Merging currency areas where the number of claims or the number of internationally recruited staff at the location were below a certain number (i.e., 50);

(ii) Setting the trigger point for these areas at a higher level.

CCAQ considered alternative (ii) to be the more acceptable approach.

(g) Currency of payment of education grant (advances and claims). This issue had been raised in the past on several occasions. The problem rested with the accounting practices and procedures of two organizations. CCAQ would continue to strive for the resolution of the matter;

(h) Other issues. In order to respond appropriately to situations at certain duty stations where the current level of the education grant was deemed to be inadequate, CCAQ reiterated its request that the Chairman of ICSC be authorized to approve a special measure akin to the approach approved for Beijing. Finally, CCAQ informed the Commission of its intention over the next two years to work towards a simplification of the education grant. The education grant was one of the most complex and process-intensive entitlements for the organization to administer. CCAQ believed that there was room for simplification.

Discussion by the Commission

153. With regard to the capital assessment fee, the Commission noted that over the past few years, at an increasing number of duty stations, a capital assessment fee was being billed to staff members with children at some educational institutions. Some Commission members expressed the view that in order to be able to assign staff to particular duty stations, it might be necessary for the Organization to pay most, if not all, of such costs. The Commission recalled, however, that the basic premise underlying the education grant was that the staff member should be paying a reasonable share of his/her child's education. Accordingly, it would be fair to expect that such fees should be shared between the staff member and the Organization.

154. The Commission noted that the flat rate for boarding had not been adjusted since 1990 for those currency areas where an adjustment of the level of maximum allowable expenses had not been triggered. It further noted that in cases where the maximum allowable expenses had been adjusted (based on school fee movements), the flat rate for boarding had also been adjusted by the same percentage as the movement of fees. The flat rate for boarding costs in most of these currency areas had moved at a considerably faster rate (and thus to a higher level) than would have been the case if the adjustment mechanism had been based on movements of consumer price indices.

155. The Commission considered that it was reasonable to assume that there was a higher degree of correlation between the movement of boarding costs and the consumer price indices than between boarding costs and tuition fees. The Commission concluded that it was desirable to adjust regularly the flat rate for boarding, independently of the maximum allowable expenses adjustment.

156. With regard to the payment of the flat rate for boarding in those cases where the educational institution did not provide boarding, the Commission noted that this was related to the manner in which educational services were organized in different countries. The Commission considered that for purposes of determining admissible educational costs, there was no significant distinction between educational costs billed for tuition and boarding by one institution and those billed for tuition and boarding separately by two institutions. As long as the institution providing the boarding was certified by the educational institution, the Commission concluded that the tuition and boarding costs should be considered admissible as in the case of educational institutions billing both tuition and boarding.

157. The Commission noted that the relationship between the flat rate for boarding and the additional flat rate for boarding at designated duty stations had changed over time owing to disparate adjustment mechanisms for the two

rates. It recalled that it had established the additional flat rate at 150 per cent of the normal flat rate in 1989 in recognition, inter alia, of the lack of educational facilities at the designated duty stations. It considered that it would be necessary to re-establish the 1989 relationship between these two flat rates and thereafter to adjust both on a regular basis in order to maintain the desired relationship.

158. With regard to the trigger point for the adjustment of the level of the education grant, the Commission noted that it was a function of the number of claims within a currency area that had expenses above the maximum allowable expenses (i.e., at least 5 per cent of the claims must have expenses above the maximum allowable expenses in order to trigger a review of the level of the grant). For those currency areas with very few claims, the trigger point could be reached when as few as one or two claims exceeded the maximum allowable expenses. The Commission reviewed proposals to merge some currency areas to place the remaining currency areas on a more equal footing in that regard. It concluded, however, that such mergers would increase the complexity associated with the administration of the scheme. Alternatively, it examined proposals to increase the trigger point to 10 per cent (instead of the current 5 per cent) or to require at least five claims in addition to the current 5 per cent trigger. It considered that requiring the absolute number of five claims (and the current 5 per cent of claims) had the desired effect of placing currency areas with few claims on a more equal footing with currency areas with large numbers of claims.

159. In the context of currency areas with large numbers of claims, the Commission noted that the United States dollar area/outside the United States represented one of the largest currency areas. It therefore considered that, at the time of the biennial reviews, tuition fee data should be available for a representative number of educational institutions within that area.

160. The Commission noted that organizations did not all follow the same practice with regard to the currency used for the payment of education grant claims and advances nor for the determination of allowable and non-allowable expenses. While some Commission members considered that some flexibility was warranted in that regard, others expressed the view that practices should be harmonized.

161. The Commission noted the CCAQ request to maintain a provision that would permit the Chairman of ICSC, by delegated authority of the General Assembly, to deal with exceptional situations where, for example, the level of the grant became inadequate at specific duty stations owing to a sharp and sudden increase in fees. The Commission recalled that it had requested the Assembly, in 1996, to delegate such authority to its Chairman in the case of a specific problem in Beijing.[8] In section IV of its resolution 51/216, the Assembly had agreed to do so.

162. The Commission expressed the view that the methodology for determining the level of the education grant had functioned adequately. With the revisions currently recommended, however, modification of portions of the methodology was required. The revised methodology is elaborated in annex XVIII to the present report.

Decisions of the Commission

163. The Commission decided to inform the General Assembly that the methodology for determining the level of the education grant introduced in 1992 had functioned reasonably well. However, based on the experience of the application

of the methodology during the past three reviews of the level of the grant, it had concluded that some modifications to the methodology would be in order. Specifically, the Commission decided on the following modifications to the methodology:

(a) Capital assessment fees:

(i) The organizations and staff would share the cost of the one-time capital assessment fees on the same basis as allowable expenses;

(ii) In the event that such an arrangement resulted in staff expenditures beyond the maximum allowable expenses, the Chairman of ICSC could exceptionally increase the level of the maximum allowable expenses at the request of the organization for the duty station in question;

(iii) Subsidized loan arrangements should be considered in cases where the capital assessment fee would be refunded by the school upon departure or graduation;

(b) Flat rate for boarding:

(i) For currency areas where flat rates for boarding had not been adjusted since 1990, they would be adjusted by the movement of the consumer price indices between 1990 and the date of the next biennial review;

(ii) For currency areas where flat rates for boarding had been adjusted since 1990, they would be adjusted by the movement of the consumer price indices between the date of the last adjustment and that of the next biennial review;

(iii) For currency areas where the flat rate for boarding would be adjusted by the movement of the consumer price indices at the time of the next biennial review, the rate should continue to be adjusted by the movement of the consumer price indices at the time of subsequent biennial reviews;

(iv) In cases where boarding was not provided by the educational institution, cost of boarding from other sources would be considered as an admissible expense within the maximum allowable expenses as long as the educational institution certified the boarding facility;

(c) Additional flat rate:

(i) On the occasion of the next biennial review of the level of the grant, additional flat rates would be established for all currency areas at the level of 150 per cent of the normal flat rates;

(ii) Thereafter, additional flat rates for all currency areas would be adjusted on the same date and by the same percentage as the adjustment of the normal flat rate;

(d) Trigger point. For currency areas with few education grant claims, the maximum allowable expenses adjustment would be triggered if at least 5 per cent and a minimum of five claims exceeded the existing maximum allowable expenses limit.

164. The Commission also decided to request the General Assembly, in cases where a duty station in the United States dollar area/outside the United States had experienced an exceptional increase in fees between two reviews of the level of the grant, then the Chairman of the Commission should be delegated the authority to approve a special measure that allows for the reimbursement of admissible expenses up to the approved level of the maximum allowable expenses for the United States dollar/United States area.

165. The Commission further decided to urge the organizations to harmonize their practices in respect of allowable and non-allowable expenses and currency of payment and to collect data on tuition fees from schools in the United States dollar area/outside the United States at the time of biennial reviews.

166. The Commission decided that the methodological changes outlined under paragraph 163 above would be taken into account beginning with the 1998 biennial review.

B. Performance management

167. The Commission undertook an in-depth review of this subject in the light of several interwoven programme components:

(a) Review of the reward and recognition measures that the Commission had recommended to the organizations in 1994 as part of a broader performance management package.[9] It was foreseen by the Commission at that time that those measures would be introduced by organizations that wished to use them on a pilot basis for two years. At the end of that time, the matter would be reviewed by the Commission.[10] In line with that schedule, an item on performance management had been included in the 1997 programme of work;

(b) As noted in paragraph 286 below, a comprehensive report on the implementation of ICSC decisions and recommendations was scheduled for 1997. It was considered that the performance management component of that report could be subsumed within the current review, which thus served a dual purpose;

(c) In section I.C of its resolution 51/216, the General Assembly invited the Commission to provide general comments on the concept of performance awards and bonuses to the Assembly at its fifty-second (1997) session. It also requested the Secretary-General to make operational proposals by 1 October 1997 on the possibility of introducing a system of performance awards or bonuses, in the context of the performance appraisal system, to a limited number of staff in recognition of their outstanding performance and individual achievements in a given year, for consideration by the Assembly at its fifty-second session. A parallel request was addressed to the executive heads of common system organizations to develop such proposals as a matter of priority for submission to their governing bodies. Such proposals should be coordinated, to the extent possible, with those developed by the United Nations Secretary-General;

(d) In section IX of the same resolution, the General Assembly requested the Commission to take the lead in analysing new approaches in the human resources management field so as to develop standards, methods and arrangements that would respond to the specific needs, especially future staffing, of the organizations of the United Nations common system, including consideration of flexible contractual arrangements, performance-based pay and the introduction of special occupational rates, and to report to the Assembly thereon at its fifty-third session.

168. The considerations underlying the Commission's current review, and the outcome thereof, are summarized in paragraphs 187 to 219 below.

Views of the organizations

169. The Chairman of CCAQ said that organizations were committed to vigorous reform in the area of performance management. Performance management systems stood a better chance of success if embedded in other organizational reforms; the current climate of reform provided grounds for optimism in that regard. The introduction of performance awards and bonuses must be viewed in the context of the efforts to improve overall organizational performance being undertaken across the system. The organizations attached priority to the improvement of their performance management systems and had made considerable strides in that regard. They had benefited from the work of ICSC in the area.

170. CCAQ reiterated its endorsement of the principles relating to performance management promulgated by ICSC in 1994.[9] The Commission's earlier recommendations for recognition and reward programmes had been unduly prescriptive and restrictive. By contrast, the proposals currently before the Commission were flexible and non-prescriptive; they were in line with the spirit and the delineation of responsibilities provided for in General Assembly resolution 51/216. Organizations would therefore be inspired by this non-prescriptive framework in the development of their individual strategies, which must be tailored to suit their organizational cultures and the different stages of evolution of their performance management systems. The secretariat had suggested a number of interesting options; others might also be considered. Organizations would share their experiences as each moved forward at its own pace and manner.

171. Recalling the Commission's previous recommendations on non-monetary awards, CCAQ stressed their potential in recognition and reward systems; indeed, they might be less contentious than cash awards at the start-up of a scheme.

172. CCAQ considered that any finite determination as to whether cash awards for Professional and higher category staff should be indexed for cost of living and/or remuneration and differentiated by grade level should be made by individual organizations based on their requirements.

173. As to the possible establishment of quotas for withholding within-grade salary increments, CCAQ noted that the extensive experience of human resources practitioners and a wealth of academic research pointed to the conclusion that arbitrary pre-established quotas were not a healthy or equitable manner of ensuring the integrity of performance management systems. Clearly, each organization's governing body would exercise the necessary rigour when reviewing operational proposals and approving funding for such programmes.

174. CCAQ emphasized that:

(a) The development of proposals for rewarding performance should not detract from ongoing efforts to ensure competitive conditions of service;

(b) The starting point for designating a performance award should be an effective system for differentiating levels of performance. Organizations' performance appraisal systems were, however, at very different stages of development. Existing performance management schemes might therefore need to be refined or supplemented by other measures.

175. Flexibility should be balanced by guarantees of accountability to the various stakeholders. Governing bodies needed to be assured that schemes would be managed within the resources available and differentiate according to levels of contribution to organizational performance. Staff needed guarantees that systems would take due account of their concerns for fair and equitable treatment: systems must also be transparent and not perceived as detrimental to the staff as a whole. The Commission needed to be assured that its recognition of the need for flexibility was compatible with its oversight responsibilities. CCAQ therefore wished to express its commitment to complying with appropriate reporting and monitoring mechanisms as the quid pro quo for allowing organizations the flexibility to determine the schemes appropriate to their individual needs.

176. The organizations realized that performance recognition was an important tool for improving productivity and morale, but they were also committed to dealing more vigorously with underperformance through the provision of additional feedback, coaching and training in the first instance and, when such measures failed, through existing sanctions ranging from the delaying or withholding of within-grade increments to termination for unsatisfactory performance. The additional guidance provided on the management of underperformance was helpful. In that context, CCAQ welcomed the ICSC secretariat's recognition that most staff were hard-working and dedicated and were making an effective contribution.

177. The representative of the United Nations said that the introduction of performance management was an intrinsic element of the Organization's human resources strategy. The newly introduced performance appraisal system was an important tool in that process. It was based on mutually agreed performance objectives; key features were enhanced dialogue/communication, work planning and prioritization, and increased managerial accountability. The system aimed to enhance responsibility and accountability at all levels and to strengthen shared common values across the Organization. Its introduction had been accompanied by an extensive training initiative, both in the procedures themselves and in complementary programmes in supervision, people management and collaborative negotiation skills. Transition to the new system would take time, with adjustments made in the light of experience. A review after the first year of operation was currently under way.

178. It was against that background that the United Nations would respond to the General Assembly's request for the development of operational proposals on the possibility of introducing a system of performance awards or bonuses, in the context of the performance appraisal system, to a limited number of staff in recognition of their outstanding performance. First, the United Nations wished to emphasize that the development of proposals for performance awards should not detract from ongoing efforts to ensure fair and adequate compensation and salary levels and conditions of service for all staff. Secondly, the intention was to proceed on a step-by-step basis, in consultation with the staff, having in mind the need to establish the credibility of the new appraisal system before placing additional demands on it. Consideration was being given, in the first instance, to proposing non-monetary recognition awards for individual or team excellence, as well as for effective management. Managers would be given latitude to establish their own recognition schemes and best practices could be shared. As a second stage, consideration would be given to the possibility of introducing cash rewards or bonuses. That approach did not imply that non-monetary rewards were less important (in fact, they might have greater motivational value) but simply that they might be less contentious and easier to introduce quickly.

179. The United Nations was also conscious of the need to address underperformance effectively, with a more proactive approach by management to provide remedial training, coaching, counselling and developmental assignments. Continued underperformance should result in appropriate sanctions. It should, however, be emphasized that the majority of United Nations staff were hard-working and dedicated.

180. The United Nations appreciated the Commission's previous and present work in the area of performance management, which had informed its new system. It was particularly pleased by the Commission's recognition of the need for non-prescriptive guidance to assist organizations in devising schemes that met their own requirements and recognized the values, behaviours and competencies that each organization sought to promote.

181. The representative of the United Nations Development Programme (UNDP) said that performance management should be placed in the broader context of the drive for improved organizational effectiveness and reform in which all organizations were engaged. For UNDP, which had seen a 30 per cent reduction in its headquarters core posts, and was braced for further cuts, organizational performance needed to be measured in areas such as efficiency gains and resource mobilization. The UNDP performance management system, which had been in effect for close to seven years, was grounded in a culture of feedback, recognition and staff development. Some two thirds of the staff received a satisfactory rating; staff whose performance was below par were dealt with accordingly, and the money saved from withholding within-grade increments had funded the UNDP modest non-cash awards programme, which had been implemented on a pilot basis. It was clear that organizations were at different stages in the development of their performance management systems: they thus needed to operate within a flexible, non-prescriptive framework. The development of overall principles and a framework, including monitoring procedures, was the challenge facing the Commission, which thus had an important role to play. He urged ICSC to encourage pilot projects and innovative approaches. The staff had strong views on the subject of performance management, which organizations should take into account; it was essential for the processes that were developed to be fully transparent.

182. The representative of the Food and Agriculture Organization of the United Nations (FAO) said that his organization was committed to forging a performance culture, although it would take time. Speaking from practical experience, he said that a major hurdle was the less than sterling example sometimes set by managers, which was bound to sap staff confidence in the process. Sanctions for poor performance existed, but were difficult to apply in practice, because those who should have applied them were often not well versed in the procedures. The support of senior management was crucial to the success of any improved performance management system. He strongly supported enhanced training, particularly at managerial levels.

183. The representative of UNESCO said that improving performance management was an important ongoing challenge for UNESCO. There was some evidence that managers did not take their responsibilities in that regard seriously enough; the organization therefore planned to invest additional effort in enhancing managerial skills. She emphasized the need for a flexible framework within which organizations could develop programmes suited to their needs.

184. The representative of ITU said that the application of sanctions was a long and costly process on which managers were often hesitant to embark. He saw performance appraisal as but one element in determining eligibility for merit

awards: other factors needed to be taken into account. Reducing or eliminating within-grade increments could pose problems for an organization like ITU, where career prospects were very limited: in many cases, increments were the only vehicle for advancement.

185. The representative of ICAO noted that his organization had an awards programme of long standing, whereby an additional within-grade increment (exceptionally two) could be granted for outstanding performance. While the annual cost of the programme was negligible (around 0.1 per cent of payroll), the cumulative impact over time was considerable; moreover, staff already at the top of their grade did not qualify for an award irrespective of performance. ICAO considered that it would be more effective to introduce lump-sum merit awards. He did not favour the modulation of step increments, which would create disruption in the system and yield little in the way of a bonus pool because those increments varied in value from 1.8 to 3 per cent of net remuneration. He noted that current provisions for dealing with underperformance included delaying the within-grade increment: this would have the same result as the modulation of steps.

186. The representative of the International Maritime Organization (IMO) said that merit awards were not yet a reality for IMO. The prerequisite would be to have in place a realistic, objective performance appraisal system, linked to organizational objectives and based on dialogue. Performance indicators should be realistic, and the targets set should be reasonable; more generally, it was important to draw on the experience of others, both within and outside the system.

Discussion by the Commission

187. The Commission noted that its current discussion of the subject area was the outcome of a process in which it had been engaged intermittently since the early 1980s.

188. At the outset, the Commission recalled some basic assumptions that should underpin the consideration of performance management:

(a) Performance management was a process designed to optimize performance at all levels: individual/team/organizational unit/agency;

(b) A viable performance management programme must be integrated with the organization's strategy for the management of its people resources; this in turn should be aligned with the overall strategic direction of the agency;

(c) Performance management aimed at the effective management of all performance levels: (i) improving/optimizing "satisfactory performance" (which was not a synonym for mediocrity); (ii) recognizing superior performance; and (iii) managing underperformance.

189. Against that backdrop, it was clear that the recognition of superior performance by whatever means (whether cash awards or non-cash awards) could not be seen in isolation from the ongoing improvement of performance at all levels. Therefore, as important as the institution of bonus/award schemes was the establishment of an environment in which learning, innovation and creativity were encouraged and nurtured, as well as the effective management of the minority of staff who were not making an effective contribution.

190. For the current review, the Commission first analysed the organizations' current performance management schemes in the light of its earlier package of measures.

Principles and guidelines for performance appraisal and management

191. The principles and associated guidelines are to be found in the Commission's 1994 annual report.[11] In general and with few exceptions, organizations had reported a high degree of satisfaction with the principles and guidelines, which they considered to have been helpful and pertinent and which, in most cases, had been incorporated into their performance management and appraisal systems. Actual application had sometimes been more challenging, especially the need for performance management to be important and meaningful for managers and supervisors (principle 4), the need for clear communication (principle 8) and the importance of objective and accurate performance ratings (principle 9). The Commission noted that those difficulties derived more from the overall management culture than from any shortcoming in the principles and guidelines themselves, which it concluded did not require revision.

192. The overall conclusions of a detailed analysis of the organizations' performance appraisal and management systems were as follows:

(a) There was considerably greater awareness of the link between performance appraisal/performance management and overall agency performance;

(b) There was widespread use of specific objectives and outputs as a basis for measuring performance in the context of an agreed work plan;

(c) A number of organizations currently had in place, or were setting up, performance appraisal systems that could be used as an accurate gauge for recognizing different levels of performance;

(d) However, it was equally, if not more, important to run those systems and it would appear that some agencies required additional support in such areas as performance planning and target setting.

Reward and recognition mechanisms

193. A more mixed picture emerged from a review of the application of the Commission's recommendations on reward and recognition. Those recommendations comprised cash awards of up to half a month's salary at the mid-point of the scale, non-cash awards of similar value or non-cash symbolic awards. An overall limit (5 per cent of an organization's workforce) was set on the number of staff to whom such awards could be applied. That percentage limit was to represent the maximum number of staff rated outstanding (or equivalent term used for the highest rating under a particular organization's performance appraisal system). The awards were conceived of as equally applicable to individuals and teams; in fact, the team approach was seen as particularly beneficial in a multicultural workforce like the United Nations system, and it was recommended that monetary and non-monetary awards should be focused on the team approach.[12]

194. While a number of agencies had non-cash award schemes (using mainly symbolic awards) that were in line with the ICSC recommendations, none had adopted the ICSC recommendations on cash awards. ITU was proposing to the ITU Council an award scheme based on that recommended by the Commission, while requesting that it consider liberalizing its earlier recommendations. The use of team awards was marginal.

195. The diversity of the common system, and in particular major differences in the maturity and robustness of the organizations' performance management systems, would seem to suggest a more flexible approach, with actual mechanisms tailored to specific organizational strategies and cultures.

196. The less than enthusiastic reception accorded to the Commission's recommendations on merit recognition had led the Commission to conclude that some rethinking of approach was called for. While the earlier recommendations had not been prescriptive (i.e., organizations were not obliged to introduce them), they were intended to assist those wishing to use merit recognition as a performance management tool. Overall, they did not appear to have met that objective.

197. The Commission's earlier recommendations had followed an extensive discussion and the review of a number of options, including the possibility of granting some form of reward (cash or non-cash) to up to 20 per cent of the workforce. Eventually, the Commission had opted for a rather restrictive approach, for two reasons: first, the Commission wished to proceed carefully in a sensitive area; and second, there was a difference of opinion within the Commission on the very concept of relating rewards, especially monetary, to performance in the international civil service.

198. From the current context, it was quite clear that the organizations' performance management schemes, and their attitude towards merit awards and bonuses, were quite varied. Some felt that their systems were not yet strong enough to support substantial rewards. Others felt that awards must be significant and accessible to a reasonable proportion of the workforce if they were to have meaning. The conclusion to be drawn was that a flexible approach was required, since there was no one formula that would fit the situations of all organizations.

199. The Commission's role should rather be to establish a framework within which organizations would develop their own solutions. That conclusion was borne out by an extensive review of performance management practice in both the public and private sectors, which had revealed the following overall trends:

(a) A tendency in many national civil services towards the decentralization of performance management authority to the level of individual departments. That was often part of a broader process of management devolution;

(b) A trend towards linking performance to some form of recognition, whether cash or non-cash measures, pay-based or non-pay-based. Performance-based approaches were increasingly gaining ground in the public sector, in a drive to improve efficiency and demonstrate value added;

(c) Increasing use of multi-source assessment, whereby the sphere of assessment was broadened to include some or more of the following: self and/or (either individually or in groups) peers, subordinates and clients. Peer assessment was very common and was often used for personal development or feedback. Some employers were finding that behavioural use of multi-source assessment was a useful way of gaining acceptance of what was often seen as a threatening change in traditional assessment before incorporating it into the performance appraisal process as such.

200. Specific schemes varied considerably and were adapted to the environment and the ends sought. In the comparator civil service, the performance management and review system had been abandoned in 1993 owing to perceived

rigidity, lack of credibility and questionable returns. A variety of incentive schemes were currently in place in different federal civil service agencies of the United States; the emphasis was on flexibility and greater employee involvement in design. The trend in some comparator agencies was towards the use of non-cash schemes and/or team awards.

201. The Commission recalled that the pay structure currently in effect in the United Nations common system provided for a scale of grades through which staff progressed by means of promotion; salary progression within a given grade was by means of predetermined increments, granted subject to satisfactory performance on an annual (in some instances, biennial) basis. While nominally performance-based, the system was in practice more seniority-driven than official policies and provisions would indicate. The fact that the performance of only a minuscule proportion of staff was rated unsatisfactory had resulted in a situation where the within-grade increment had become a quasi-automatic right, as opposed to a reward for satisfactory performance. The General Assembly had on several occasions requested the Commission to review that practice.

202. The Commission therefore considered whether the management/modulation of within-grade step increments would be a viable approach, possibly in conjunction with cash bonuses. It examined in detail such mechanisms as the establishment of a quota for the withholding of increments or the modulation of the amount of increments according to performance. While those mechanisms should not be ruled out as approaches for the organizations to develop, the Commission noted that: (a) the establishment of quotas was likely to be contentious; (b) the modulation of steps would need to take into account Pension Fund regulations; and (c) the amounts yielded by the withholding or modulation of within-grade increments would not be significant (the average value being under 2 per cent of net remuneration), vis-à-vis the disruption caused.

203. Any arrangements involving the establishment of a minimum-maximum salary range for each grade, which in effect was a pay-based approach to reward and recognition, should be handled on a pilot basis. Specific criteria should be in place before the introduction of such pilot schemes, which should be developed in close consultation with the ICSC secretariat.

204. The Commission reiterated its earlier position that it did not consider the granting of additional within-grade increments to be an appropriate reward mechanism for the reasons stated in its earlier reports; namely

(a) They provided a permanent reward for superior performance that had been recognized at a given point in time;

(b) Their pensionability represented an additional cost to the system, which was not performance-related;

(c) They aggravated problems of career stagnation by pushing staff faster towards the top of the grade;

(d) They were not available to deserving staff who were already at the top of the grade;

(e) Their motivational impact was lessened by the fact that they were paid monthly rather than on a lump-sum basis.

205. It accordingly recommended that organizations currently granting merit increments should discontinue them in favour of lump-sum bonuses.

206. The Commission's overall conclusion, as in 1994, was that the approach that would best meet the needs of the common system would be recognition and reward measures in the form of cash and non-cash awards for teams and individuals. Such bonuses might be payable in respect of performance rated above fully satisfactory.

207. The Commission noted that a number of organizations might not be intending to introduce cash bonuses, either currently or in the future. For those that were, the parameters stated in paragraph 219 (a) below should operate. The Commission emphasized that those parameters were "outer boundaries", i.e., absolute limits and not targets; the Commission understands from all available evidence that few, if any, organizations would come close to those limits.

208. The above-referenced parameters should replace the Commission's earlier recommendations on cash awards as contained in its twentieth annual report.[13] All other recommendations and guidance by the Commission in the area of performance recognition, as set out in the same annual report, should be taken as reiterated; that included general characteristics of merit awards (see annex VIII, paras. 33 and 34); procedures (para. 37); basis for determining who receives an award (paras. 38 and 39); use of team awards (paras. 42-44); and other forms of recognition and reward (paras. 45-49). The Commission requested the ICSC secretariat to issue an updated framework for performance management, incorporating those various elements, in an appropriate form in the near future.

Training for performance appraisal

209. The Commission noted that a number of organizations had complemented the introduction of their new systems with extensive training programmes, both in performance appraisal per se and in associated areas.

Measures for dealing with unsatisfactory performance

210. As reiterated above, the management of underperformance was considered to be an integral element of any performance management system. Most staff were dedicated and hard-working, but there would always be some situations where staff were not contributing effectively to an organization's goals.

211. Common-system organizations had at their disposal an array of measures for dealing with unsatisfactory performance. Recent investigations had confirmed the findings of earlier reviews that, with few exceptions, the application of measures for dealing with underperformance was very low in common system organizations. The difficulty lay not so much with the availability of tools as with their application.

212. While the United Nations system was not alone in that regard, the Commission felt strongly that the more proactive treatment of underperformance, including the application of sanctions where necessary, required fresh impetus at the current stage. The greater flexibility offered with regard to recognition and awards should be accompanied by a renewed effort to tackle the admittedly difficult area of underperformance.

213. On the basis of its further review of the management of underperformance, the Commission restated certain principles and offered additional guidance as follows:

(a) The identification and proper treatment of unsatisfactory performance should be part and parcel of an organization's performance management strategy.

Performance improvement measures should be integrated more explicitly into performance management strategies. Despite constant reiterations of the principle that merit recognition and underperformance measures are two sides of the same coin, in practice the provisions for the treatment of underperformance (as opposed, for example, to rebuttal or recourse procedures) were often not part of the performance management package (if such exists);

(b) In the small number of cases where staff were not performing up to par, it was important to tackle the problem promptly and forthrightly in order to preserve the credibility of the system, the reputation of the organization and the motivation of the staff as a whole;

(c) Early detection and corrective action is crucial to the proper treatment of underperformance. Prevention was always better than cure; thus the Commission reiterated its earlier emphasis on the need for more stringent and more rigorous screening techniques at the time of recruitment. The more proactive appraisal of newly recruited staff, i.e., during the probationary period, could significantly assist in forestalling (or weeding out) performance problems;

(d) In the management of underperformance, as for performance management in general, the roles and responsibilities of the different parties might be defined as follows:

(i) Staff members bear primary responsibility for their on-the-job performance (i.e., performing work within a reasonable timeframe and to a satisfactory standard). Individual staff members were expected to accept responsibility for tackling performance problems; they should discuss with the supervisor/manager any factors impeding their performance at full capacity;

(ii) Senior managers should create a climate that supports the management of underperformance and show by their own actions that they take performance management seriously as an integral part of the organization's human resource management strategy;

(iii) Managerial and supervisory staff should model the behaviour they expect of their staff; ensure that tasks and standards are clearly articulated, and provide constructive ongoing feedback against them; identify and develop options and strategies for positively influencing performance, including the establishment of performance improvement plans as in subparagraph (f) below;

(e) Performance appraisal should incorporate a predefined performance plan. If it was determined that, despite ongoing monitoring, feedback and coaching, the staff member was not meeting the expectations spelled out in the plan, a written performance improvement plan should be drawn up by the supervisor in consultation with the staff member, specifying timeframes by which certain outcomes would have to occur. The plan might include on-the-job or formal training as appropriate;

(f) If the performance appraisal showed the appraisal to be below the fully acceptable level described in the performance plan, the staff member's within-grade salary increment should be delayed or withheld;

(g) If, after a reasonable period of time (e.g., one year), the staff member's performance remained unsatisfactory, further action needed to be taken in the light of the circumstances of the case. (The range of actions available to managers and supervisors in cases of underperformance are set forth in the Commission's twentieth annual report.)[14]

(h) It had often been stated that overly complex rebuttal recourse and appeals mechanisms were a major deterrent to effective performance management. Without an in-depth review of those procedures, which differed in each agency, the Commission was not in a position to assess whether that was so. While some procedures might be cumbersome, an equal problem was that managers were often not fully conversant with them and failed to take the proper action at the right time. Proper documentation of incidents of poor performance and corrective/remedial action recommended at every stage was therefore crucial and ultimately, perhaps, was the key to the successful management of underperformance. Managers should be fully apprised of the procedures and processes; information and training in that regard should be an essential component of managerial and supervisory training;

(i) The use of procedures that involved performance ratings being vetted by others in addition to the staff member's hierarchical supervisor(s), for example, a management review board, was strongly encouraged as part of the performance appraisal process;

(j) The use of multi-based assessment techniques, even if only as a management or personal development tool (rather than directly in the performance appraisal process), could do much to foster a climate of openness, transparency and trust.

Reporting and monitoring mechanisms

214. The Commission noted that the quid pro quo for greater flexibility with regard to performance awards and bonuses should be procedures for reporting on and monitoring those schemes on a regular basis.

215. Since organizations had been requested to develop operational proposals on the matter for presentation to their respective governing bodies, it might be expected that the governing bodies themselves would wish to impose certain reporting requirements at the organizational level and that the funding for such programmes would require the approval of the governing body concerned.

216. For the common system, it was suggested that reporting requirements should be seen at two levels: (a) for bonus and award programmes that were add-ons to salary, compliance with the parameters listed in paragraph 219 (a) below; (b) any arrangements affecting base pay would need to meet additional requirements, which should include a fully functioning performance appraisal scheme and demonstrated staff support, e.g., agreement in a joint staff/management body, results of attitude survey or other indicator.

217. The Commission had requested its secretariat to develop an appropriate format for reporting at the common system level, in consultation with the organizations.

218. With a view to providing the organizations with additional assistance in the design of their performance management programmes, the Commission had also requested its secretariat to complete as soon as possible and circulate to the organizations a portfolio of best practice in the public and private sector, based on its research.

Decisions of the Commission

219. Noting that differing organizational strategies and cultures called for a flexible approach to performance management, the Commission decided:

(a) That the recommendations on cash awards as contained in its twentieth (1994) annual report should be replaced by the following:

(i) Cash awards to any individual for a given performance period should not exceed 10 per cent of the mid-point of the base/floor salary for Professional staff and 10 per cent of the mid-point of the net salary of General Service staff (if that resulted in a higher amount for staff in the General Service and related category, a cap should be set at the amount for Professional and higher category staff);

(ii) Performance awards and bonuses should not be payable to more than 30 per cent of the workforce. That should be a sufficiently broad coverage to provide a realistic expectation to the staff at large of receiving an award; at the same time, it would not be tantamount to an overall salary increase. Non-cash awards should be subsumed within the ceiling; however, symbolic awards, letters of appreciation and the like could be considered in addition to the ceiling (and should, in any event, as recommended earlier by the Commission, be granted in conjunction with cash awards or non-cash awards);

(iii) The amounts of awards should be differentiated according to performance level, with higher amounts payable to those rated as outstanding;

(iv) The overall cost of a recognition and reward programme should not exceed 1.5 per cent of an organization's projected remuneration costs (i.e., net remuneration for Professional and higher category staff, salaries for the General Service and related categories);

(v) The basis for determining who received an award should in principle be the ratings deriving from the performance appraisal system, which was the logical basis for differentiating performance levels. The use of the performance appraisal system as the primary vehicle for nominating award recipients would enhance the perception of objectivity and transparency. That determination might be supplemented by the findings of a merit review board, performance review group or similar body that would screen recommendations for merit awards;

(b) Any pay-based approach to performance recognition should be introduced on a pilot basis; such pilot schemes should be developed in close consultation with the ICSC secretariat;

(c) To complement its earlier recommendations on the management of underperformance, as contained in its twentieth annual report with the additional guidance contained in paragraph 213 above;[15]

(d) To request organizations to present biennial reports to the Commission on their performance management schemes, including the utilization of cash awards, using a format to be developed by the ICSC secretariat in consultation with the organizations;

(e) To request the ICSC secretariat to complete as soon as possible and circulate to the organizations and staff a portfolio of best practice in the area of performance management.

C. Appointments of limited duration

220. At its summer 1994 session, the Commission considered, at the request of the General Assembly, a contractual arrangement developed by the United Nations under the 300 series of its staff rules for appointments of limited duration. Following review, ICSC decided to advise the Secretary-General that the United Nations Secretariat might proceed with the new arrangements on a provisional basis. A pilot scheme for appointments of limited duration being applied by UNDP was also given a provisional go-ahead. By resolution 49/223 of 23 December 1994, the General Assembly noted these preliminary conclusions by ICSC and requested the Commission to report its findings on the arrangements for contracts of limited duration upon completion of a more in-depth review of the matter.

221. At its spring 1996 session, the Commission took note of a status report on the pilot programmes of the United Nations and the UNDP appointments of limited duration. It decided that these projects should remain in pilot status. Noting the increasing trend towards limited-duration employment arrangements in the common system, ICSC decided to invite its secretariat to convene a working group with the participation of the organizations and staff and, as necessary, of the secretariat of the United Nations Joint Staff Pension Fund (UNJSPF) to review the various issues involved from the technical, legal and human resources policy angle. The Working Group on appointments of limited duration met in Paris in April 1997 before the spring 1997 session of ICSC and in New York in July 1997 immediately prior to the summer 1997 session of the Commission.

222. The Working Group undertook an in-depth review of the pilot schemes applied by the United Nations and UNDP, analysed the organizations' current and future needs, and reviewed issues such as the interface with core staff, geographical distribution, pension fund coverage and equity/loyalty. It also reviewed an arrangement in place in ITU for managed renewable-term contracts, conducted detailed comparisons between appointments of limited duration schemes and the standard compensation package, examined workforce statistics and looked into terminological issues, the two latter issues in collaboration with the CCAQ secretariat. Ultimately, the Working Group proposed a framework for appointments of limited duration employment by recommending guiding principles, guidelines and a basis for possible remuneration structures.

Views of the organizations

223. The Chairman of CCAQ welcomed the flexibility afforded by the appointments of limited duration arrangements. It seemed evident that the schemes introduced by the United Nations and UNDP were working well. At the same time, the Committee was aware that the introduction of flexibility had to be approached responsibly and that, therefore, a number of guiding principles should be maintained.

224. CCAQ noted that a number of system-wide concerns for the equitable treatment of employees had been met positively. One of the prime reasons for introducing arrangements such as appointments of limited duration was to ensure that persons working under special service or contractual service agreements could be provided with the protection afforded to staff members under the

Convention on the Privileges and Immunities of the United Nations as well as social security protection arrangements for staff recruited for similar periods of time. For example, staff under appointments of limited duration arrangements were not only eligible for coverage under the Convention, but were also full members of the Pension Fund, thus being eligible for death and disability coverage. Their pensionable remuneration levels were defined like those of regular staff members. They were participants in the organizations' health insurance arrangements and, in the case of the United Nations, had the same leave entitlements as other staff members.

225. Overall, CCAQ viewed the two pilot schemes as ground-breaking initiatives that could serve as examples on which flexibility could be built in other areas. That would be in keeping with organizations' basic policies and responsibilities and form part of their drive to introduce progressive human resources management.

226. Both the United Nations and UNDP stated that their schemes had met their expectations and objectives and that they would like to continue applying the appointments of limited duration arrangement.

227. UNDP had found that its approach to the appointments of limited duration scheme provided the needed flexibility and ease of management for activities of limited duration. The arrangements had turned out to be cost-effective in terms of salaries and administrative overhead. UNDP was especially pleased to note that the scheme had indicated that managers were responsibly managing their financial and human resources, and using their discretionary authority judiciously. That was particularly important at a time when changing organizational realities were requiring a transition to less predictable funding and increased use of limited duration and more specialized activities.

228. In noting the need to preserve the current contractual arrangements for appointments of limited duration, the United Nations had argued that the human resources requirements of the Organization had significantly evolved over time in response to more demanding programme needs. That had led the United Nations to seek more flexible frameworks for employment relationships. Different facets of those relationships had to be addressed, including the status of the new workforce, social security coverage, and the level of salaries and benefits.

229. The United Nations had indicated that with the expansion and change in the nature of the activities of the United Nations system, there was an urgent need to create a flexible contractual instrument that would enable the Organization to recruit, at short notice and with minimum overhead costs, non-career staff in both the Professional and General Service categories for the peacekeeping, peacemaking, humanitarian and special operational needs of the Organization.

230. Before the creation of appointments of limited duration, there had been no adequate contractual devices for engaging the services of individuals quickly for a limited period of time and without a career perspective. The appointments of limited duration arrangement had enabled the United Nations to react quickly to emerging issues and to recruit and deploy large numbers of staff much faster than with regular appointment modalities, largely owing to the administrative simplicity of the pay package. No contractual obligations or expectations were created in the long term with staff recruited under that arrangement. Administrative simplicity, cost effectiveness and optimization of resources had resulted from the use of this contractual instrument.

231. The representative of ITU, although a potential user of the system, expressed some reservations on the schemes as currently applied. He stated that social security provisions were a cornerstone of the common system that should not be diluted. They should not be negotiated with individual staff members against the remuneration package. In particular, he questioned the application of short-term entitlements with regard to annual leave and sick leave. He emphasized that the common system organizations had to be responsible employers with regard to all social security provisions and pointed out that under the headquarters agreement in Geneva, all organizations were obliged to apply provisions equivalent to those prevailing in Switzerland.

232. The representative of IAEA confirmed that the situation pertaining in Austria was similar. With regard to a suggestion made to exclude appointments of limited duration staff from the Pension Fund, he commented that, normally, Professional staff stayed in IAEA for only up to five years, with a maximum ceiling of seven years. To include one group of staff members in the Pension Fund while excluding another would not seem fair. IAEA could not support such a suggestion.

Discussion by the Commission

233. The Commission took note of the report of the Working Group and of the analysis prepared on the two schemes in place.

234. It also noted the interest expressed by organizations in some kind of alternative employment framework. These were, besides the two organizations applying the pilot schemes, the United Nations Children's Fund (UNICEF), the United Nations Population Fund (UNFPA), UNHCR, the World Food Programme (WFP), the United Nations Industrial Development Organization (UNIDO) and the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA). It was noted that the United Nations Office of Project Services was actually the largest user of the UNDP appointments of limited duration arrangements. UNFPA and WFP already employed a limited number of staff under the appointments of limited duration arrangement, under the UNDP and the United Nations schemes respectively. Other agencies possibly interested in the arrangement were UNESCO, WHO and the International Fund for Agricultural Development (IFAD). For ITU, interest was contingent upon the outcome of the review.

235. The Commission noted that there were currently about 1,100 staff members serving under appointments of limited duration arrangements (approximately 800 in the United Nations, 100 in UNDP and 200 in the United Nations Office of Project Services).

236. There was general consensus in the Commission that appointments of limited duration represented a trend also seen in other employers that required both flexibility and swiftness in recruitment in times of limited resources. The appointments of limited duration arrangement was seen as a useful hiring tool. It proved the vitality of the common system as an employer. Both schemes had proved to be prudent models.

237. Some concern was, however, expressed as to whether appointments of limited duration might replace those of current contractual arrangements over time and thus impinge on the "core" workforce, which was normally defined as: (a) staff on permanent/career/non-time limited contracts; and (b) on fixed-term contracts of one year or more. The Commission noted the affirmation by the United Nations that it was using appointments of limited duration only for a very specific purpose, i.e., peacekeeping and related special missions in the field. UNDP,

likewise, stated that staff on appointments of limited duration were used only for critical activities related to time-limited issues, and that they were not supposed to replace core staff. The Commission noted that potential users of a limited-duration contractual modality would be interested in using them for "non-core" functions (e.g., technical cooperation, development support, emergency and disaster relief and short-term advisory services).

238. The Commission stressed that appointments of limited duration, normally granted for up to six months (in the United Nations) and up to one year (in UNDP), should under no circumstances be extended beyond a total duration of four years. Otherwise the whole purpose of the introduction of the arrangement would be put into question.

239. The Commission further noted that a major driving force behind the introduction of appointments of limited duration in both the United Nations and UNDP/United Nations Office of Project Services had been the concern expressed by auditors about the inappropriate use of consultant contracts; one of the objectives had been to provide the protection of staff member status and appropriate social security coverage, while obviating the need to go through the often cumbersome procedures associated with the recruitment of "regular" staff.

240. The Commission discussed whether the contributions to the Pension Fund by both appointments of limited duration staff and the employing organization could not be better used by using part of that amount for purchasing death and disability coverage outside for the staff concerned, and including the balance in the pay package. Since appointments of limited duration staff members could not by definition serve more than four years, they would not meet the vesting period of five years for a pension from UNJSPF. In that connection, it took note of certain clarifications provided by the Secretary of UNJSPB, who confirmed that such staff were nevertheless covered by the provisions for service-incurred disability or death, including pension coverage for surviving spouses and children up to the age of 21 years. Staff under appointments of limited duration were not an isolated part of the United Nations system. Every staff member with an appointment or service of six months or longer was required to become a participant in the Pension Fund; many might not reach the minimum of five years of contributory service to vest a right to a pension per se. The Pension Fund had to be fully funded. The contributions by staff on fixed-term appointments or appointments of limited duration and by their employing organizations had been taken into account in the determination of the required rate of contributions for the long-term actuarial balance of the Fund. The whole funding basis of the Pension Fund would be put in jeopardy if all staff serving less than five years were to be excluded. In many instances, appointments of staff members on fixed-term contracts were extended. That could also apply to appointments of limited duration staff who later might receive other types of appointments from the same or another member organization of the Fund.

241. The Commission took note of the statement made by the representative of UNJSPB and decided not to pronounce itself on the subject of whether staff under appointments of limited duration should be included in the Pension Fund, because that issue was not within its statutory mandate.

242. The Commission emphasized that appointments of limited duration should not substitute for the practice of subcontracting or partnership arrangements with non-governmental organizations working in the field with lesser cost, provided all safeguards with regard to competence and effectiveness were observed. It noted the statement by the user organizations that, in practice, the

appointments of limited duration arrangement was quite different from the other two arrangements.

243. The Commission stressed that appointments of limited duration arrangements should be used for their intended purpose; they should not be abused, whether as a device for the extension of employment of staff who otherwise would have been separated, or for the unwarranted hiring of retirees contrary to governing body directives.

244. Some concern was raised that a large portion of appointments of limited duration staff seemed to be recruited from developed countries. While noting that the regular requirements for geographical distribution did not apply, the Commission was unanimous that staff under appointments of limited duration should be recruited from as wide a geographic basis as possible.

245. The need was expressed for a more common terminology used by the different organizations when describing categories of staff and their conditions of service. Lacking that, it was difficult to evaluate properly organizations' use of non-core staff. It was noted that that area would be the subject of further investigation by the ICSC secretariat in consultation with the organizations.

246. The Commission further noted the current remuneration packages paid by the two organizations involved in the pilot projects (see annex XIX to the present report). It was provided with an analysis of remuneration levels for staff of the two pilot programmes and those of staff subject to the standard remuneration package. The comparisons showed that the appointments of limited duration remuneration levels were broadly in line with those of the standard package. The Commission was of the view that the current provisions provided a framework that would allow organizations to recruit staff on appointments of limited duration status in a manner most appropriate to the needs of the organization. Whereas flexibility was provided in the determination of both base salary and certain elements that should form part of the lump sum, it was important that certain basic principles and guidelines should be adhered to. Following an extensive review of the proposals of the Working Group, the Commission agreed on the principles and guidelines which appear in annex XX to the present report. A monitoring system should be devised whereby the ICSC secretariat should be regularly informed on status and developments.

247. The Commission noted that a final assessment of the United Nations and UNDP appointments of limited duration schemes would only be possible after those schemes had been in effect for four years. It concluded that the current arrangements should continue under pilot schemes until the Commission could undertake a definitive review. Other organizations could develop their own schemes on a pilot basis provided that the principles and guidelines for appointments of limited duration employment were observed. If organizations other than the two with current pilot projects wished to introduce appointments of limited duration arrangements, the ICSC secretariat should be closely associated at the design stage of the particular arrangement. The organizations should report to the ICSC secretariat every two years, with a review by the Commission every four years.

248. The Commission also took note of the managed renewable term contracts arrangement in ITU, which it had requested the Working Group to review. It noted the Group's conclusion that as that scheme was still in its early stages, no assessment of it could be undertaken.

Decisions of the Commission

249. The Commission:

(a) Agreed in principle that appointments of limited duration arrangements within the common system were an appropriate modality to the extent that the scope of the practice did not impinge on the existence of the international civil service;

(b) Endorsed the principles and guidelines for the use of appointments of limited duration in common system organizations appearing in annex XX;

(c) Decided that until it was in a position definitively to review the functioning of the United Nations and UNDP/United Nations Office of Project Services appointments of limited duration pilot schemes, they should remain in pilot status. Other organizations wishing to use such arrangements could proceed on a pilot basis provided that:

(i) The principles and guidelines for appointments of limited duration employment were observed;

(ii) The ICSC secretariat was closely associated with the development of these arrangements;

(d) Underscored the importance of appointments of limited duration arrangements being used for their intended purpose; in that connection, the overall time limit of four years for appointments of limited duration employment should be strictly observed;

(e) Decided that appropriate reporting and monitoring modalities should be put in place to ensure that the Commission and its secretariat were kept fully informed of the status and developments in respect of appointments of limited duration employment modalities;

(f) Decided that the managed renewable term contracts in ITU should remain in pilot status and be subject to the same monitoring and reporting requirements as for appointments of limited duration arrangements.

D. Standards of travel and per diem

250. The General Assembly, in its decision 51/465 of 3 April 1997, requested the Commission to undertake a review, at the earliest opportunity, taking into account the relevant reports of the Advisory Committee on Administrative and Budgetary Questions (ACABQ) and the Joint Inspection Unit (JIU), the question of travel entitlements of staff of the United Nations common system and to report thereon to the Assembly at the second part of its resumed fifty-first session. Bearing in mind the scope of the study and the complexities involved, the Commission decided to consider the matter at its summer 1997 session.

251. The documentation considered by the Commission was based on the information collected by its secretariat, particularly as regards the standards of air travel, from some of the Member States, the organizations of the common system and other international organizations. Account was also taken of prior consideration of the matter by ACABQ, JIU and the Secretary-General of the United Nations. The overall objectives of the review were limited to the determination of:

(a) The continuing need for certain travel allowances and policies (the rule permitting business class service if scheduled flying time is expected to exceed a certain number of hours, stopovers and rest periods, and supplemental daily subsistence allowance);

(b) If the lump-sum option for home leave was reasonable.

Views of the organizations

252. The Chairman of CCAQ stated that the report at hand was a first step in the analysis of some of the complexities of this sensitive issue. Noting that the study mainly included standards of travel and levels of per diem, he stressed that standards of travel were only one element in the management of travel and, in particular, travel costs. He defined the purpose of travel as the need for organizations to fulfil their mandates. The United Nations common system was made up of some unique organizations with global missions. Travel to and from different destinations was a key factor in the successful attainment of those missions. Throughout the common system, governing bodies and senior management had stressed the need for travel costs to be carefully monitored and reduced to the extent possible. For CCAQ it was a question of management, not over legislation or arbitrary standard-setting.

253. If the purpose of travel was the starting point, the conditions under which that travel was carried out became the next consideration. Organizations were responsible for the safety and health of their staff. They should ensure that airlines used by staff were secure and that on arrival at their destination staff would be able to carry out their mission efficiently. Organizations must further ensure that staff travel was cost-effective.

254. CCAQ felt that before conclusions could be drawn on the issue of travel, more data should be collected and analysed in order to assess whether the current system was adequate and should be retained. In addition to medical information, such data should include statistics on travel frequency and destinations, which many organizations had readily available. He requested the Commission to exercise restraint and to request greater clarification from the General Assembly as to the purpose of its request. If the Assembly was concerned with travel costs, they should be the subject of a review and not the standards of travel.

255. He continued that the issue of the daily subsistence allowance also required more research so as to enable a fundamental appraisal of its purpose and to determine whether the current arrangements still met that purpose. In that context he noted that a full analysis had to be made of those instances where travel arrangements and daily subsistence allowance rates applied not only to staff but equally to representatives of Member States attending meetings of governing bodies. There might be a number of situations where the General Assembly would not have jurisdiction over such travel arrangements. CCAQ also called for an in-depth analysis of the practices of national civil services, the Coordinated Organizations and other international organizations.

256. Although CCAQ realized that the Commission could not ignore an urgent request of the General Assembly, he suggested that the Commission should explain to the Assembly that requests such as those, with unrealistic time frames, did little to help the Commission, inter alia, to achieve its goals to help in the reform of human resources management.

257. The United Nations Medical Director fully supported the statement by the Chairman of CCAQ. She summarized the medical elements that had led the medical directors of the organizations to support "business class" travel and stopovers for journeys of six or more hours' duration. Air travel under cramped conditions for several hours resulted directly in the following medical problems:

(a) The vascular diseases - venous thromboembolism and peripheral arterial thrombosis, which were life-threatening conditions;

(b) Skeletal problems - chronic lower and upper back pain, which could become a serious source of absenteeism, poor morale and performance;

(c) Psychological problems - physical discomfort contributes to stress and many illnesses were stress-related.

258. The United Nations Medical Director stressed that the likelihood of suffering from all of those conditions while regularly travelling by plane increased steadily from the age of 40 years and noted that the average age of the United Nations staff member was 48. She also described the symptoms of jet lag, which included fatigue, insomnia, disorientation, inability to concentrate and mood swings. The best way to minimize those symptoms was to improve comfort while in the aircraft and to plan stopovers. She referred to an extensive bibliography in support of the conclusions of the Medical Directors and concluded that comparisons with other international organizations would be more appropriate than with national civil services. In that context, she suggested a comparison with the travel regulations of the World Bank, whose standards of staff travel were superior to those of the United Nations.

259. The representative of IAEA noted that his organization had recently completed a comprehensive review of all aspects of official travel with the aim of maximizing cost-effectiveness. His organization did not reduce the standards of travel but introduced the "most logical fare concept", which took into consideration travel time, number of changes required and costs. The personal status of staff members did not enter into the equation. Based on those considerations managers might decide on the most appropriate option. He continued that his organization had also developed a built-in incentive for the travel management agent based on the lowest possible fare provided.

Discussion by the Commission

260. At the outset the Commission addressed the issue of the time-frame within which the General Assembly had requested it to complete its study regarding standards of travel. It was evident that the Assembly wished to receive the Commission's report on the issue as soon as possible. That was reinforced by the letter from the Secretary of the Fifth Committee requesting the Commission to report on the matter to the Assembly at the third part of its resumed fifty-first session, scheduled for the first half of September 1997. While the Commission would have liked to address the issues involved at the earliest possible opportunity and to submit its report to the Assembly expeditiously, it was hoped that when the Assembly received the report of the Commission on this item it would understand that the scope and complexity of the issues involved required considerable time and resources.

261. The Commission addressed the issue of its mandate under the statute in the context of the General Assembly's request and noted that under article 11 (b) of

its statute it had the authority, inter alia, to establish the standards of travel.

262. The Commission noted that in its decision 51/465 the Assembly had requested ICSC to review the travel entitlements of the staff members of the common system without clarifying the purpose of the review. The Commission considered that if the intention behind the review was to reduce travel costs, then the question of official travel of staff rather than the standards of travel should be the focus of attention. In that context it was important to bear in mind that official travel was an integral element of the organizations' overall work programmes mandated by their respective governing bodies.

263. While the full intent of the General Assembly's request was not clear from an examination of the reports of JIU and ACABQ, to which the Assembly had referred, the Commission concluded that the review should be geared towards an evaluation of existing travel standards and practices with the aim of achieving greater uniformity and consistency of such practices system-wide.

264. The Commission noted that the organizations of the common system were mandated to fulfil diverse tasks by their respective governing bodies and that their overall missions, and therefore their travel programmes and requirements, were significantly different. Some organizations required their staff to undertake travel in conjunction with attendance at meetings at headquarters locations or other major conference centres of the United Nations system. Others required large numbers of their staff members to travel to difficult locations in the context of project execution or to carry out inspections. Bearing in mind the wide differences between the mandated programmes and the associated travel requirements, it was not possible nor was it desirable to come up with a "one size fits all" policy directive in the context of standards of travel. In fact, the Commission was of the view that the imposition of such a policy could be counter-productive inasmuch as it would hamper the organizations in fulfilling their mandates in an efficient, expeditious and cost-effective manner.

265. The Commission noted that in the recent past a number of organizations had carried out in-depth studies regarding their travel requirements and examined ways to fulfil those requirements in a cost-effective manner at the level of their governing bodies. Following those reviews, individual organizations had adopted a system of travel most suitable for their needs. In most instances the studies had led to significant reductions in travel costs without compromising, inter alia, the standard of accommodation.

266. Bearing in mind the above, the Commission concluded that the issue of standards of travel should be left to the legislative/governing bodies of the individual organizations to sort out in consultation with their respective executive heads. It was, however, of the view that on specific issues the Commission should provide broad guidance with a view to ensuring greater uniformity among the organizations.

267. The Commission noted that travel was undertaken by the staff of the common system for various reasons, such as official business, home leave, family visits, etc. It further noted that elements that were relevant in the case of official travel did not necessarily assume the same level of relevance in the context of travel on home leave or family visits. In view of that the Commission agreed that separate studies would have to be undertaken for travel for various purposes. Bearing in mind the time constraints and the lack of

relevant statistical and other data, it decided to focus its attention for the time being on issues relevant to travel undertaken for official business.

268. The Commission noted that the following were some of the aspects of travel that could be considered with a view to providing broad-based guidance to the organizations: (a) standards for air travel: threshold for business class travel; (b) stopovers; and (c) supplements to the standard per diem for senior officials. In order to study the issue of supplements to the standard per diem rates paid to senior officials, it would be essential to collect detailed statistics relating thereto. The Commission noted that in view of the time constraints those statistics were not available to its secretariat but that such data could be collected for further analysis of the issues involved in the future. The Commission would revert to the issue at a later date following the collection and analysis of the relevant data.

269. The Commission examined the data on travel standards obtained from some of the Member States and concluded that it was difficult to compare the standards of travel of United Nations personnel with those of the employees of Member States. United Nations staff tended to travel considerably more than the staff of national civil services. Furthermore, employees of Governments of Member States were often allowed to use only the national airline, which frequently provided them with automatic upgrades.

270. It nevertheless considered that the question of the standards of accommodation for air travel, and in particular the question of the threshold for business class travel, could be addressed on the basis of the data on hand about the medical impact of travel. The organizations' practices as regards the standards of accommodation are summarized in annex XXI to the present report.

271. Some members referred to the information in paragraphs 257 and 258 above and considered that the recommendation of the Medical Directors to provide business class for journeys of six hours or more was backed by medical evidence and could therefore be used for developing guidelines for the threshold for business class travel. Others were of the view that while there were substantial medical data regarding the effects of travel on the health of an individual, a case could not be made on the basis of those data for a particular threshold while agreeing that the data could be used in a flexible manner. The Commission concluded that for flights of six or more hours' duration it was reasonable to consider upgrade from economy to business class and that if organizations changed their current practices regarding the threshold for business class travel, they would be expected to move towards the threshold of six hours.

272. The Commission noted that the definition of the duration of flight was important for the determination of class of travel on official business. In that regard it concluded that it should be defined as the scheduled flying time including any refuelling stops or the time required for change of planes.

273. The Commission turned its attention to the issue of stopovers and noted that there was some divergence in the practices followed by the organizations. In general, however, a stopover or a rest period of not less than 24 hours was allowed after 10 to 12 hours of journey, while two stopovers or one stopover and one rest period was the standard practice for journeys of more than 16 or 18 hours' duration depending on the organization. The Commission noted the views of the organizations that stopovers were expensive and that a number of organizations had eliminated them. Considering that stopovers were allowed for journeys of more than 10 hours, i.e., when the travel was undertaken in business

class, the Commission was of the view that that practice could be discontinued on the understanding that staff members would be allowed a rest period of no less than 24 hours' duration upon reaching their destinations.

274. The Commission decided that it would bring the above conclusions on the standards of travel and stopovers in the context of official travel to the attention of the General Assembly and that the other issues, namely supplements to the daily subsistence allowance (15 and 40 per cent), travel on home leave and family visits, etc., would be addressed at a later date.

Decisions of the Commission

275. The Commission decided to inform the General Assembly that in response to its request under decision 51/465, it had studied the issue of standards of travel and wished to report the following to the Assembly:

(a) The scope and complexity of the issues involved would require considerably more time than was given by the Assembly. Consequently, the Commission's study was limited in scope at the current stage;

(b) Bearing in mind the diverse mandates of the organizations and their significantly different travel programmes and requirements, it was neither desirable nor feasible to impose a uniform approach on them;

(c) The overall issue of travel policy, including some flexibility in standards of travel, should be left to the legislative/governing bodies of the individual organizations to sort out in consultation with their respective executive heads;

(d) Broad guidance could nevertheless be provided to the organizations with a view to ensuring greater uniformity vis-à-vis their travel standards. In that context the Commission considered that for official travel:

(i) For flights of six or more hours' duration it was reasonable to consider an upgrade from economy to business class. If organizations wished to change their time threshold for business class travel, it would be expected that they would move towards the threshold of six hours;

(ii) The duration of flight should be defined as the scheduled flying time including any refuelling stops or the time required for change of planes;

(iii) The current practice of the organizations regarding stopovers for journeys of more than 10 (or 12) hours should be discontinued on the understanding that staff members would be allowed a rest stop of no less than 24 hours' duration upon reaching their destinations.

276. The Commission decided to resume its consideration of other travel-related issues such as supplements to the daily subsistence allowance, travel on home leave and family visits, etc., at a later date and to submit a report thereon to the General Assembly.

E. Mission subsistence allowance

277. In part IV of its resolution 51/218 E of 17 June 1997, on administrative and budgetary aspects of the financing of United Nations peacekeeping operations, the General Assembly requested the Commission to develop, for submission to the Assembly at its fifty-second session, a proposal to provide a post allowance and separate maintenance allowance for those personnel who leave their families at their home duty station while they are on mission assignment.

278. Since the remuneration provisions for the United Nations staff on mission are currently regulated largely through the payment of a mission subsistence allowance, it appeared that the General Assembly wished to explore alternative options to remunerate staff on mission assignment. In the light of the short period between the request made by the Assembly and the beginning of the forty-sixth session of the Commission, only a preliminary study of the issue was carried out.

Views of the organizations

279. The Chairman of CCAQ stated that the organizations respected the request of the General Assembly but since the issue affected only one organization, he requested the Commission to limit the resources placed in the exercise.

280. The representative of the United Nations stated that the mission subsistence allowance had for a number of years been a daily allowance payable by the Organization for living expenses incurred by staff members in the field. He stressed the fact that a mission subsistence allowance was given in lieu of a daily subsistence allowance or any other cost-of-living allowance to staff serving at special non-family missions.

281. He explained the difference between the mission subsistence allowance and the daily subsistence allowance. The latter had been established by ICSC and was intended for stays of a shorter duration. The mission subsistence allowance reflected stays of longer duration in a location. The daily subsistence allowance was based on hotel room costs and meals and had a standard rate for incidentals (15 per cent), while the mission subsistence allowance was based on costs of longer-term accommodation, costs of meals and 15 per cent for incidentals. The mission subsistence allowance rates were uniform within a mission area and were always lower than the daily subsistence allowance rates.

282. The United Nations representative emphasized that the entitlements of staff assigned to peacekeeping missions were dictated by the temporary and short-term mandate periods of the missions. The mission subsistence allowance, as a central element in those entitlements, responded to the operational demands of missions. Staff assigned to special missions rotated continuously in the mission area. With a uniform mission subsistence allowance throughout the mission area there was no need to monitor the movement of staff on a daily basis. Therefore, there was no need to adjust on a daily basis the cost-of-living expenditure of staff throughout the area. For those reasons the United Nations found the use of mission subsistence allowance cost-effective and an administratively simple mechanism to meet the costs of subsistence in the field.

Discussion by the Commission

283. The Commission noted that it was not possible to conduct a detailed study on the issue in such a short time and asked the secretariat to look into the

matter further and to report thereon to the Commission at its forty-seventh session.

284. The Commission provided guidance to its secretariat with regard to the issues it would like to be addressed in the further study of the item, inter alia: (a) applicability of the mission subsistence allowance to other organizations of the common system; (b) relationship between the mission subsistence allowance and post adjustment; (c) relationship between the mission subsistence allowance and the daily subsistence allowance; and (d) applicability of the mission subsistence allowance to General Service staff.

Decision of the Commission

285. The Commission decided to report to the General Assembly that it had decided to defer the matter to its forty-seventh session.

Chapter VII

ACTION TAKEN BY THE COMMISSION UNDER ARTICLE 17 OF ITS STATUTE

Implementation of the decisions and recommendations of the Commission

286. Article 17 of the Commission's statute provides for the submission of an annual report to the General Assembly that includes information on the implementation of ICSC decisions and recommendations. In practice, annual reporting is reserved for significant or urgent unresolved issues: in keeping with the biennialization of the work programme of the Fifth Committee, the Commission decided in 1992 that a comprehensive implementation report would be submitted to the Assembly every two years, starting in 1993.[16] Following that approach, implementation reports were presented to the Commission and the Assembly in 1993[17] and 1995;[18] in fact, these were not truly comprehensive reports, but rather interim reports on selected subjects. For the 1997 exercise, a broader based, albeit non-exhaustive, approach was followed, as described below:

(a) The following were included:

(i) Major recommendations and decisions under articles 10 to 13, including detailed statistical reports on the implementation of job classification standards and the Common Classification of Occupational Groups, as well as article 16 (supplementary payments);

(ii) The practices of the organizations in respect of the Commission's 1992 recommendations in the area of gender balance and work/family issues were covered in detail. An updated statistical report on gender balance in the common system was under preparation by the secretariat and would be circulated prior to the forty-seventh session;

(b) Not included were:

(i) Recommendations under article 14 of the statute in such areas as human resources planning, recruitment, career development, training, etc. Many of these recommendations dated back to the early 1980s, and it was suggested that their general relevance to current day realities should be reassessed, with a view to producing an updated human resources policy framework for the common system. Work should go forward in parallel on specific studies and products;

(ii) Performance management, which was under current review (see paras. 167-219 above).

287. A high level of compliance with mandatory decisions was noted in the documentation; it was found that provisions for salaries and allowances were applied uniformly throughout the common system. It was reported that the introduction of a time limit on the non-removal element of the mobility and hardship allowance had not been applied by some organizations until 1 July 1997, for administrative reasons. In general, however, implementation was proceeding satisfactorily; the secretariat would keep the matter under review and report subsequently to the Commission as appropriate.

288. A common classification standard for Rome had been under review at the agency level for several years; the lead agency for that duty station had indicated that a final draft would be submitted shortly for promulgation. CCAQ, which was responsible for maintenance of the global classification standard for the General Service at non-headquarters locations, was currently finalizing an updated statistical report on that standard.

289. The secretariat was proposing to organize the information collected for the current exercise into a data bank of information on compliance with ICSC decisions and practices in respect of the Commission's recommendations. That should serve as an information source for the Commission, organizations, staff and other users; it could be updated on an ongoing basis and made available to the Commission biennially for information. As in the past, any urgent outstanding matters would be brought to the Commission's attention as and when they arose. That should greatly streamline the process for all concerned.

Views of the organizations

290. The Chairman of CCAQ said that most of the information presented was of a factual nature; the organizations thus took note of it. It was important to recognize the distinction, drawn in the ICSC statute, between decisions of the Commission, which required compliance, and its recommendations, which provided guidance. The organizations welcomed the initiative to set up a database; its usefulness would be enhanced if it were posted on the Internet. The organizations concurred with the need to revamp the Commission's policy work under article 14 of the statute: a number of the recommendations were outdated and should be taken off the books.

291. The representatives of the United Nations and UNDP noted that the global classification standard for the General Service at non-headquarters duty stations and the resultant seven-grade salary scale structure were now in effect worldwide (except for one duty station, where the prevailing situation had rendered that impractical).

Discussion by the Commission

292. The Commission took note of the information provided on the implementation of ICSC decisions by the organizations and their response to the Commission's recommendations. It expressed appreciation for the secretariat's efforts to streamline the process by establishing a database, and encouraged its early completion and dissemination, which would assist the Commission's general level of knowledge about organizational practices. It noted the secretariat's intention to complete that process by the end of August 1997.

293. Support was expressed for a new push to develop updated policy guidance in a number of areas falling under article 14 of the statute, where it was felt that the Commission should be a catalyst for change; the more so in the light of General Assembly resolution 51/216, in section IX of which the Assembly had called upon the Commission to take the lead in analysing new approaches in the human resources management field. That effort needed to be supported with appropriate resources.

294. The Commission noted that the implementation rate of job classification standards and the Common Classification of Occupational Groups had improved, with significant progress in the implementation of the General Service standard in Geneva; moreover, new standards were being developed for London and Paris, which provided more robust support for the salary-setting process. In that

connection, the secretariat recalled that interest had been expressed earlier by the Commission in the development of a single General Service job classification standard applicable to all headquarters duty stations. Following further consultations with the organizations and on the basis of the secretariat's work programme priorities, the secretariat had felt that the development of a common standard, while remaining a longer-term goal, should not be pursued in the immediate future. The emphasis would be on ensuring a reasonable degree of consistency among the standards at the different headquarters duty stations; moreover, in the context of the Commission's review of the salary survey methodology for the General Service and related categories (see paras. 103-131 above), it had been agreed that common salary survey benchmarks should be developed for highly populated occupational groups.

295. The Commission took note of the secretariat's intention to circulate before the end of 1997 an updated statistical report on gender balance in the common system, as a supplement to the information contained in the implementation reports on measures taken within individual organizations and at the level of ACC.

296. It was noted by some members that the practice of ILO in regard to the language incentive for Professional and higher category staff (whereby eligibility was contingent on the knowledge of two official languages in addition to the mother tongue) should serve as an example for other organizations and should be taken into account during the upcoming (1998) review of that matter, which the General Assembly had requested in resolution 48/224.

Decisions of the Commission

297. The Commission decided:

(a) To take note of the information presented by the secretariat for the 1997 implementation exercise, and to encourage it to complete by the end of August 1997 the database on compliance by the organizations with ICSC decisions and their practices in respect to recommendations of the Commission;

(b) To note with satisfaction the overall high rate of compliance with the Commission's decisions;

(c) To request the secretariat to give priority to the reactivation of work under article 14 of the Commission's statute, with a view to responding to the General Assembly's request in part IX of its resolution 51/216;

(d) To note the secretariat's intention to circulate a statistical report on gender balance in the United Nations common system prior to the Commission's forty-seventh session.

Notes

[1] Official Records of the General Assembly, Fifty-first Session, Supplement No. 30 (A/51/30).

[2] Ibid., para. 128.

[3] Ibid., Fiftieth Session, Supplement No. 30 (A/50/30), para. 119 (b) (ii) and (iii), and addendum (A/50/30/Add.1), para. 32.

[4] Ibid., Supplement No. 30 (A/50/30), para. 172 (g), and addendum (A/50/30/Add.1), para. 47 (c) (ii).

[5] Ibid., Supplement No. 30 (A/50/30).

[6] Ibid., paras. 298-319.

[7] Ibid., Forty-seventh Session, Supplement No. 30 (A/47/30), para. 251, and annex VII.

[8] Ibid., Fifty-first Session, Supplement No. 30 (A/51/30), para. 230 (e).

[9] Ibid., Forty-ninth Session, Supplement No. 30 (A/49/30), paras. 331 and 334; and ibid., annex VIII, para. 40 (b).

[10] Ibid., Supplement No. 30 (A/49/30), para. 335.

[11] Ibid., annex VIII.

[12] Ibid., Supplement No. 30 (A/49/30), para. 334.

[13] Ibid., paras. 292-348, and annex VIII.

[14] Ibid., annex VIII, para. 50.

[15] Ibid., paras. 50 and 51.

[16] Ibid., Forty-seventh Session, Supplement No. 30 (A/47/30), para. 29 (a).

[17] Ibid., Forty-eighth Session, Supplement No. 30 (A/48/30), paras. 243-261.

[18] Ibid., Fiftieth Session, Supplement No. 30 (A/50/30), paras. 346-353.

Annex I

WORKING GROUP ON THE CONSULTATIVE PROCESS AND WORKING ARRANGEMENTS

1. The Working Group on the Consultative Process and Working Arrangements will:

(a) Be composed of 12 members, 4 each representing the International Civil Service Commission (ICSC), executive heads and the two staff bodies;

(b) Identify the areas of discontent of the participating parties, review and make recommendations to address the concerns and possible measures to be taken to rectify the situation, in accordance with General Assembly resolution 51/216, section VII, paragraph 2, and the ICSC statute. If any areas are identified that require modifications or changes in the functioning of ICSC, its decision-making process, preparation and the organization of work, recommendations by consensus will be made to the appropriate body;

(c) Be chaired, on a rotating basis, by the three parties mentioned above (including one co-chairman for the staff bodies as agreed between the Coordinating Committee for Independent Staff Unions and Associations of the United Nations System (CCISUA) and the Federation of International Civil Servants' Associations (FICSA);

(d) Be assisted in its deliberations by a facilitator from outside the system with experience in handling issues of this nature. The facilitator will assist the chairman in conducting the discussions;

(e) Have a bureau comprising the three rotating chairmen and the facilitator;

(f) Have its agenda drawn up by the Bureau by consensus;

(g) Reach its recommendations by consensus. However, if consensus is not reached on a point, the disagreement will be reflected in the final report;

(h) Possibly meet in New York with the following programme of work:

Days 1-3: Substantive discussions of issues on the agenda;
Day 4: Bureau prepares the draft report;
Day 5: Adoption of the report.

2. The Chairman of the Fifth Committee will be informed of the establishment of the Working Group. The Bureau of the Working Group may invite, in accordance with rule 38 of the rules of procedure of ICSC, members of the Bureau of the Fifth Committee.

3. The report of the Working Group will be reviewed by the Commission at its July 1997 session and by all parties. The comments made in the Commission will be attached to the report of the Working Group and forwarded to the General Assembly as an annex to the annual report of ICSC for 1997.

Annex II

LETTER DATED 2 JULY 1997 FROM THE PRESIDENT OF THE FEDERATION OF INTERNATIONAL CIVIL SERVANTS' ASSOCIATIONS ADDRESSED TO THE VICE-CHAIRMAN OF THE COMMISSION

In response to your letter dated 13 May and the fax from the Secretary of the Commission dated 2 July 1997 I wish to inform you that the Federation of International Civil Servants' Associations (FICSA) will not be participating in the meeting of the Working Group on the Consultative Process and Working Arrangements. This decision is the outcome of the genuine democratic principles that govern the workings of the Federation.

As you know, FICSA has made the point that its participation in the deliberations of the Working Group was contingent upon the final decision of its membership. Prior to their taking that decision however, the member associations/unions had to be certain of the form in which the member States were going to participate in the Working Group. They had to be reassured that despite everybody's commitment to the creation of an independent body, the member States did indeed wish to be represented by the Commission in a body set up expressly to consider the Commission's own practices and working arrangements.

Upon receipt of a clear statement by the Vice-Chairman of the Fifth Committee in his letter of 27 June 1997 (see appendix) informing us that such a response could only be given within the framework of the General Assembly's consideration of the matter at its last session, and in the light of the preambular paragraphs of its resolution 51/216, the Federation requested its member associations/unions, which had already been extensively briefed on the issues at stake, to declare themselves on the matter.

Given the pressures that would inevitably be brought to bear at this late stage, and the fact that the facilitator was still unknown, the membership thought it more prudent to seek postponement of the meeting so as to be free of any constraints.

The Federation regrets having to inform you, at this late juncture, of its non-participation, but reaffirms its conviction that the subject deserves to be discussed in depth and in an atmosphere of calm that would be more conducive to considered opinion and genuine progress on a crucially important matter.

(Signed) Walter P. SCHERZER
President

Appendix

LETTER DATED 27 JUNE 1997 FROM THE VICE-CHAIRMAN OF THE FIFTH COMMITTEE OF THE GENERAL ASSEMBLY ADDRESSED TO THE PRESIDENT OF THE FEDERATION OF INTERNATIONAL CIVIL SERVANTS' ASSOCIATIONS

Thank you very much for your letter of 5 June 1997 to Mr. Ngoni Francis Sengwe, Chairman of the Fifth Committee at the fifty-first session of the General Assembly, concerning the Working Group established by the International Civil Service Commission (ICSC) to review the consultative process and working arrangements. At the outset let me express my sincere appreciation on behalf of the Bureau of the Fifth Committee for participation of the Federation of International Civil Servants' Associations (FICSA) in the informal discussions on the terms of reference for the above-mentioned Working Group at the recently concluded forty-fifth session of ICSC.

In the above-mentioned communication, you have recalled the Federation's proposal in your letter of 3 April 1997 concerning the creation of an independent body responsible for reviewing the functioning and the procedures of ICSC. In particular to establish an independent working group composed of the three parties concerned, namely, the member States, the organizations and the staff. You have also indicated that preliminary consultation with certain FICSA members has revealed that a clear position on the part of the Bureau of the Fifth Committee concerning the above proposals will permit FICSA to take a coherent and constructive position on its eventual participation in a body to review the functioning of ICSC.

You will appreciate that the Bureau's response to FICSA's proposals can be formulated only within the framework of the General Assembly's consideration of this matter and its decisions thereon. In this context, you will recall that the President of FICSA, while addressing the Fifth Committee at the fifty-first session of the Assembly on 27 November 1996, had invited Member States to give serious consideration to the Federation's proposal in document A/C.5/50/23 for a workable alternative to the concurrent consultative process.

While the Member States expressed concern about the breakdown of dialogue between the Commission and the staff bodies, there was no support for FICSA's proposal for the creation of a tripartite body comprising the member States, organizations and staff. This was made unequivocally clear by the General Assembly in its resolution 51/216 of 18 December 1996. In the preambular paragraphs of this resolution, the Assembly once again reaffirmed the central role of the Commission in the regulation and coordination of the conditions of services of the United Nations common system. Furthermore, in paragraph 2 of section VII of the same resolution, the Assembly reiterated its request in section IV, paragraph 4, of its resolution 50/208 calling upon CCISUA and FICSA to resume participation in the work of the Commission in a spirit of cooperation.

While the member States, as you rightfully stress in your letter, bear the ultimate responsibility to the determination of conditions of service, they decided to establish ICSC to advise them on these matters. That the member States continue to believe in the central role played by the Commission is evident from the above preambular paragraph as well as from similar wording in common system resolutions of the recent past.

The above developments were the basis of Mr. Sengwe's conclusions and counsel to both staff bodies to resume dialogue with the Commission within the framework of the current statute at the informal meeting on 19 March between the Bureau of the Fifth Committee, Member States and the representatives of the Commission, FICSA and CCISUA.

I trust the above information will facilitate your decision on the eventual participation of FICSA in the ICSC Working Group.

(Signed) Klaus-Dieter STEIN
Vice-Chairman of the Fifth Committee
of the General Assembly

Annex III

LETTER DATED 7 JULY 1997 FROM THE FIRST VICE-PRESIDENT OF THE COORDINATING COMMITTEE FOR INTERNATIONAL STAFF UNIONS AND ASSOCIATIONS OF THE UNITED NATIONS SYSTEM ADDRESSED TO THE CHAIRMAN OF THE COMMISSION

On behalf of the Coordinating Committee for International Staff Unions and Associations of the United Nations System (CCISUA), and in the absence of our President, I would like to bring to your attention the fact that we have some difficulties with regard to participating in the Working Group concerning the functioning of the International Civil Service Commission (ICSC).

We have been informed by the Federation of International Civil Servants' Associations (FICSA) that they will not be able to participate in the Working Group at this juncture and have officially requested that it be postponed to a later date.

Moreover, we find it difficult to take part without a prior decision as to the person who will act as facilitator for the Working Group.

Under the circumstances, we would like to support the request for the postponement of the Working Group, in order to try to obtain the full participation of all parties concerned. We would, however, like to reiterate CCISUA's intention to participate fully.

For your information, we can already announce that Mrs. Cristina Mercarder-Steele has been officially designated as one of the two persons representing CCISUA and she will be in close contact with you and the Commission.

(Signed) Javier CAMPOS
First Vice-President, CCISUA

Annex IV

COMPARISON OF AVERAGE NET REMUNERATION OF UNITED NATIONS OFFICIALS IN NEW YORK AND UNITED STATES OFFICIALS IN WASHINGTON, D.C., BY EQUIVALENT GRADES

(Margin for calendar year 1997)

Grade	Net remuneration (United States dollars)		United Nations/United States ratio (United States, Washington, D.C. = 100)	Weights for calculation of overall ratio[b]
	United Nations[a]	United States		
P-1	46 629	31 617	147.5	0.5
P-2	59 062	39 397	149.9	6.9
P-3	71 411	50 378	141.7	22.8
P-4	85 024	65 087	130.6	31.7
P-5	99 151	76 285	130.0	25.9
D-1	107 994	90 604	119.2	9.2
D-2	116 043	95 261	121.8	3.0
Weighted average ratio before adjustment for New York/Washington, D.C., cost-of-living differential				133.1
New York/Washington, D.C., cost-of-living ratio				115.0
Weighted average ratio, adjusted for cost-of-living difference				115.7

[a] Average United Nations net salaries at dependency level by grade reflecting 10 months at multiplier 44.4 and two months at multiplier 47.1.

[b] These weights correspond to the United Nations common system staff in grades P-1 (dependency rate) to D-2 (dependency rate), inclusive, serving at headquarters and established offices as at 31 December 1995.

Annex V

SALARY SCALE FOR THE PROFESSIONAL AND HIGHER CATEGORIES: ANNUAL GROSS SALARIES AND NET EQUIVALENTS AFTER APPLICATION OF STAFF ASSESSMENT

Effective 1 March 1998

(United States dollars)

Level		I	II	III	IV	V	VI	VII	VIII	IX	X	XI	XII	XIII	XIV	XV
USG	Gross	147 420														
	Net D	102 130														
	Net S	91 883														
ASG	Gross	133 994														
	Net D	93 671														
	Net S	84 821														
D-2	Gross	109 741	112 164	114 591	117 016	119 442	121 869									
	Net D	78 390	79 919	81 447	82 975	84 504	86 032									
	Net S	72 056	73 338	74 615	75 890	77 167	78 443									
D-1	Gross	97 119	99 168	101 216	103 261	105 310	107 358	109 407	111 476	113 552						
	Net D	70 324	71 633	72 942	74 249	75 558	76 867	78 176	79 485	80 793						
	Net S	65 012	66 156	67 299	68 440	69 583	70 726	71 869	72 976	74 068						
P-5	Gross	85 685	87 516	89 347	91 192	93 046	94 898	96 751	98 605	100 457	102 310	104 164	106 016	107 869		
	Net D	62 983	64 168	65 352	66 537	67 721	68 905	70 089	71 274	72 457	73 641	74 826	76 009	77 194		
	Net S	58 486	59 570	60 653	61 705	62 740	63 773	64 807	65 842	66 875	67 909	68 944	69 977	71 011		
P-4	Gross	70 619	72 382	74 141	75 913	77 700	79 483	81 269	83 054	84 839	86 623	88 406	90 197	92 003	93 811	95 619
	Net D	53 196	54 353	55 507	56 660	57 817	58 971	60 126	61 281	62 436	63 590	64 744	65 901	67 055	68 210	69 365
	Net S	49 523	50 584	51 643	52 700	53 758	54 814	55 871	56 928	57 985	59 041	60 096	61 150	62 158	63 166	64 175
P-3	Gross	57 720	59 351	60 984	62 613	64 246	65 889	67 542	69 197	70 851	72 506	74 159	75 824	77 500	79 176	80 854
	Net D	44 669	45 754	46 839	47 923	49 008	50 093	51 178	52 263	53 348	54 434	55 518	56 603	57 687	58 772	59 858
	Net S	41 685	42 683	43 682	44 679	45 678	46 675	47 670	48 667	49 662	50 658	51 654	52 648	53 640	54 632	55 626
P-2	Gross	46 458	47 883	49 305	50 728	52 149	53 572	54 996	56 453	57 915	59 372	60 830	62 291			
	Net D	37 035	38 006	38 976	39 946	40 916	41 886	42 857	43 826	44 798	45 768	46 737	47 709			
	Net S	34 741	35 622	36 500	37 380	38 258	39 138	40 017	40 909	41 804	42 696	43 588	44 482			
P-1	Gross	35 382	36 718	38 051	39 386	40 719	42 052	43 388	44 722	46 081	47 449					
	Net D	29 317	30 251	31 183	32 116	33 048	33 979	34 914	35 845	36 777	37 710					
	Net S	27 655	28 515	29 372	30 230	31 087	31 944	32 804	33 661	34 508	35 353					

Annex VI

STAFF ASSESSMENT RATES FOR USE IN CONJUNCTION WITH GROSS BASE SALARIES

Total assessable payments (United States dollars)	Staff assessment rates used in conjunction with gross base salaries (Percentage) Staff member with a dependent spouse or a dependent child	 Staff member with neither a dependent spouse nor a dependent child
First 15,000 per year	9.0	11.8
Next 5,000 per year	18.1	24.5
Next 5,000 per year	21.5	27.0
Next 5,000 per year	24.9	31.5
Next 5,000 per year	27.5	33.4
Next 10,000 per year	30.1	35.7
Next 10,000 per year	31.8	38.2
Next 10,000 per year	33.5	38.8
Next 10,000 per year	34.4	39.8
Next 15,000 per year	35.3	40.8
Next 20,000 per year	36.1	44.2
Remaining assessable payments	37.0	47.4

Annex VII

NOTES ON THE CONSULTATIONS ON THE GENEVA POST ADJUSTMENT BY THE CHAIRMAN OF THE ADVISORY COMMITTEE ON POST ADJUSTMENT QUESTIONS

1. Consultations were held at Geneva from 11 to 13 June 1997 with the Geneva-based organizations, the United Nations and the Office of the United Nations High Commissioner for Refugees (UNHCR) on the post adjustment for Geneva, as decided by the Commission at its spring 1997 session, as follows:

> "The Commission decided that:
>
> "(a) The Chairman of ACPAQ and the secretariat should consult with the organizations and staff in Geneva to obtain their views and comments on all viable options that would be responsive to the General Assembly's request as well as on the legal, technical and administrative issues related to the methodology and its implementation;
>
> "(b) The views and comments of the organizations would then be presented to the Legal Counsel of the United Nations for an opinion;
>
> "(c) Information obtained in (a) and (b) above would then be consolidated into a document which would be submitted to the Commission at its forty-sixth session for it to decide on action which could include the following alternative courses:
>
> "(i) A single post adjustment index based on prices in Geneva and the border areas of France;
>
> "(ii) Two separate post adjustment indexes, i.e., one based on Geneva prices and the other based on prices in the border areas of France;
>
> "(iii) Other options which would meet the General Assembly's concerns."

2. There was no staff participation in the consultations.

3. All legal, technical, administrative and operational points (mostly legal) raised during those discussions are included in the present annex. They have all been fully recorded although in certain cases they may seem trivial. They were summarized by the Chairman of ACPAQ, the leader of the ICSC delegation at the last meeting, and were accepted by all participants as representing, in general, the views presented.

4. Most of the participants emphasized that the basis of the problem was legal, and that the technical and other difficulties could not be addressed before the legal questions were resolved.

5. At the outset, the ICSC delegation asked for written presentations by the participants in order to ensure a faithful reflection of their views in the documentation to be presented to the United Nations Legal Counsel and subsequently to the Commission. They were told that their presentations would be sent to the United Nations Legal Counsel as received, without elaboration or comments.

6. While alternatives were identified, all Geneva-based organizations were for the maintenance of the status quo. At least five major alternatives were identified, namely:

(a) A single post adjustment calculated on the basis of coverage in Geneva and neighbouring areas of France;

(b) A single post adjustment calculated on the basis of Geneva prices and rents only (maintaining the status quo);

(c) A single post adjustment calculated on Geneva prices and rents only but comparing with prices and rents in Manhattan only (reduced area coverage in Geneva and reduced area coverage in New York);

(d) Dual post adjustment on which there were at least three major variations that might permit some refinement:

(i) Two post adjustments applicable on the basis of the actual place of residence of the staff members (all of those who lived in Switzerland would have the Geneva post adjustment, and all of those who lived in the "France voisine" would have the French post adjustment);

(ii) Two post adjustments applicable on the basis of possible access to the market, i.e., for those who could live and shop in France, a post adjustment reflecting prices in Geneva and French border areas, and those who could not reside in France, a post adjustment taking into consideration only Swiss prices and rents;

(iii) Two post adjustments on the basis of the feasibility for each organization to implement them. Those organizations that had difficulties of a legal, administrative or staff management nature would have a post adjustment based only on prices in Switzerland, and those organizations that did not face those difficulties would have a post adjustment based on prices for both Geneva and France;

(e) A post adjustment that took into consideration a larger area than the present Geneva proper, but that would also consider the complex and difficult problems of reform, restructuring and reshaping that all organizations were going through, and that would avoid adding an extraneous and very complicated element in the reform process.

7. The organizations reminded all participants of the responsibility of the executive heads to ensure that the decisions of the Commission were legally sound before implementing them.

8. It was indicated by the Geneva-based organizations that their legal status was determined by their respective headquarters agreements, which were signed with Switzerland and not with France. Furthermore, France had not ratified the Convention on Privileges and Immunities of the Specialized Agencies. Staff members did not have, as a matter of law, the right to reside or to shop in France. They might be able to do so for other reasons such as nationality, but not because they were staff members.

9. The organizations could not provide any kind of legal protection to staff members in France. In some cases, and for some nationals, the staff might feel inhibited to shop in France even if they could. Furthermore, those who needed visas had to renew them every three months.

10. Some organizations had in their staff rules and regulations a clear definition of duty station. Others did not. But the consistent interpretation was that the duty station was what was included in their headquarters agreements, i.e., Geneva.

11. Some organizations would need a change in their staff rules and regulations and would require a decision by their governing bodies before a decision by the ICSC on the matter could be implemented. Furthermore, although other organizations might not need such a decision, they nevertheless considered the question to be of such importance that they would have to ask their governing bodies for their endorsement. That process, even if successful, might take several years.

12. A decision by the Commission might be perceived as overstepping its authority under the statute. Article 11 (c) stipulated that ICSC should establish the classification of duty stations for the purpose of applying post adjustments. The definition of a duty station was the responsibility of the organization which had never been vested with ICSC.

13. The short-term Professional staff, who were entitled to post adjustment, could not obtain the Swiss carte de légitimation and were therefore deprived of any possible benefits of living in France.

14. The legality of a cost-of-living survey that took into account French prices and rents was of such importance to the staff that it would be challenged if it was carried out without their input and participation. The use of "proxies", as suggested by the consultant at the last session of the ACPAQ was not a legally satisfactory substitute.

15. The suggestion to consider prices and rents in France would also be of doubtful legal validity as it departed from a basic principle of the post adjustment system of using only prices that were available to all staff.

16. The present overlap between General Service and Professional salaries would increase. The perception of unequal treatment would be accentuated as General Service salaries were based on the Geneva labour market while Professional salaries would be affected by conditions in France.

17. The possible effects on the acquired rights of staff should be determined.

18. The above are the main legal points that were identified, which have been supplemented by written presentations. The summing up of legal issues by the Chairman of ACPAQ, as outlined above was accepted by the representatives of the Geneva-based organizations as a fair reflection of the views presented by them.

19. A list some of the administrative, managerial and technical points that were identified is provided below. It was, however, emphasized that all aspects were interlinked. For that reason, not too much time was devoted to technical, administrative and managerial questions.

20. Perhaps the most important point raised concerned the cost-benefit analysis of the exercise. Assuming that one of the intentions of the General Assembly was to reduce costs, it was questioned whether that objective could be achieved. In the long run, some organizations predicted a possible movement of staff towards Geneva. One organization already warned new staff members about living in France and its possible effects. Others predicted a movement towards France as the staff members would not be able to afford to reside in Geneva. Anyway,

the actual costs of litigation, the effort and time that would be required, the effects on staff morale and productivity and the enormous costs of a possible negative judgement by the Administrative Tribunal, should all be taken into .ccount.

21. The managerial problems would be increased in a period of major change and restructuring and, to add another complication, would be very unhelpful.

22. The system by its nature was complicated; the proposals would add an additional level of complexity. There would not only be problems of substance in relations with the staff but also problems of perception.

23. Some organizations were having major recruitment problems owing in part to the level of remuneration. Any reduction of the post adjustment would exacerbate those problems.

24. There would be long-term effects on pensions.

25. The organizations would find it difficult to provide information that could only be provided by the staff, such as lists of outlets. Some were simply not equipped to do so.

26. Computer programmes for payroll processing would have to be rewritten.

27. Some organizations might have problems of exchange rates and currency management.

28. In addition, there were the technical problems that were identified both during and after the last session of ACPAQ, such as the possible double counting of the out-of-area component, the propriety of using non-staff members to determine consumption patterns, the measurement of housing and its comparison with New York, the fact that the New York survey was not used to establish the post adjustment in New York, etc.

29. It was mentioned that the possibility of changing the base of the system to Geneva should be considered. It was recalled that that had been the case some years ago.

30. Finally, it was repeatedly said that the announced objectives of the General Assembly of ensuring equality of treatment for all Professional staff members would be defeated by any of the proposed changes, because it meant the development of a special methodology for Geneva.

31. Almost all participants emphasized the need to preserve the integrity of the common system and the dangers that were inherent in the suggested changes. It was also mentioned that a fundamental component of the common system was the post adjustment system, which must be credible, and changes suggested would deeply affect its credibility.

Annex VIII

COMMENTS BY THE INTERNATIONAL LABOUR OFFICE

1. At its spring 1997 session, following its consideration of the report of the Advisory Committee on Post Adjustment Questions (ACPAQ) concerning the Geneva post adjustment, the International Civil Service Commission (ICSC) concluded that a broader treatment of the issue, with the cooperation of the Geneva-based organizations, was warranted. It requested the organizations to submit, with a view to submission to the United Nations Legal Counsel, their views and comments on all viable options that would be responsive to the General Assembly's request, as well as on the legal, technical and administrative issues related to the methodology proposed by ACPAQ and its implementation.

2. The International Labour Organization (ILO) has already indicated on several occasions its view of the changes envisaged in the current methodology for determining the Geneva post adjustment index, pursuant to General Assembly resolutions 48/224, 50/208 and 51/216. The present comments are intended to offer a summary of the views and comments of ILO on the question. It will consider the options envisaged by the Commission from the legal, administrative and technical standpoints, as well as from the standpoint of personnel policy and the general policy of the Organization.

3. In the above decision, the Commission repeatedly emphasized the need to respond to the General Assembly's concerns. The present study will thus:
(a) examine these concerns and the objectives of the General Assembly;
(b) review the various objections raised to the changes envisaged; and
(c) examine the solutions available to the Commission.

A. Concerns of the United Nations General Assembly

4. The quest for a methodology for establishing a post adjustment for Geneva that would take account of the cost of living in neighbouring areas of France has its origin in General Assembly resolution 48/224, in which the Assembly, following its examination of expatriate benefits of staff members living in their home country while stationed at duty stations located in another country, requested the Commission to ensure that, for all headquarters duty stations, the place-to-place surveys gave a full picture of the cost of living for all staff members working in the duty station in question. That was reiterated in more specific terms in resolution 50/208, in which the Assembly requested the Commission to establish in respect of staff members at the Geneva duty station a single post adjustment index that was fully representative of the cost of living of all staff working in that duty station and that ensured equality of treatment with staff in other headquarters duty stations.

5. The objective pursued by the General Assembly is thus to restore purchasing power parity between staff working in Geneva and those working in other headquarters duty stations by ensuring that the Geneva post adjustment index accurately reflects the cost of living of all staff working in that duty station. The underlying supposition is that there is currently unequal treatment benefiting staff working in Geneva since the Geneva post adjustment is based on price surveys confined to Geneva and not including neighbouring areas of France, where a large number of staff working in Geneva live, whereas price surveys in other headquarters duty stations cover all areas where staff members generally live. (In New York, the base of the system, price data are collected

not only in Manhattan and other boroughs of New York City, but also in adjacent areas outside New York where staff live.)

6. This assumption of unequal treatment to be rectified is significantly flawed in that it compares situations that are not comparable: it overlooks the fundamental difference between Geneva and all other headquarters duty stations, including the base of the system, namely, the existence of an international border between the two principal geographical areas in which staff live. According to the case law of the Administrative Tribunal of ILO, there is inequality of treatment when staff members in the same situation, both in law and in fact, are not treated in the same manner. The current price survey methodology for Geneva differs from that used at other headquarters duty stations because the situation in Geneva differs from that at other headquarters duty stations. There is thus no unequal treatment.

7. Further, the aim of the post adjustment system being to ensure purchasing power parity between different duty stations and not between different places of residence of staff, parity is in fact being attained today between staff working at the Geneva and New York duty stations, as well as in Rome and Paris. Any problem of parity is between staff members posted to Geneva and residing in Switzerland and those residing in neighbouring areas of France, but this is not relevant from the standpoint of the objectives of the post adjustment system and its underlying principles. Attempts to establish parity between staff living in neighbouring areas of France and those posted to New York or Rome undermine the only parity of relevance from the standpoint of the system, namely, that between Geneva and the other headquarters duty stations.

8. Thus, the call by the General Assembly to modify the methodology for determining the Geneva post adjustment is unjustified, since it is based on an erroneous interpretation of the concept of equality of treatment and on an equally erroneous interpretation of the post adjustment system.

B. Comments on the envisaged changes of methodology

9. The comments of the organizations have been requested on the two options so far envisaged by the Commission, namely, a single (or, more accurately, composite) index taking into account the cost of living in neighbouring areas of France, and two indices, based on the place of residence of staff. These two options are simply different expressions of the same principle, that of taking account of the cost of living in neighbouring areas of France to determine the post adjustment applicable to Geneva, and it is to this principle that the comments of ILO relate. Separate consideration will be given where it is appropriate to make a distinction between the two options.

1. The changes envisaged contravene the statute of the Commission

10. The ICSC statute does not give the Commission competence to determine or define duty stations, but only to classify them for post adjustment purposes. Stated otherwise, the Commission has authority only to calculate the cost of living in duty stations as defined in the relevant texts, namely, the staff regulations of the various organizations. The Commission has no authority to redefine duty stations so that they coincide with places of residence, in response to the supposed exigencies of methodologies for calculating the cost of living. As will be seen below, the definition of the duty station stems from the functional requirements of each organization. The concept cannot be

redefined to correspond to place of residence if the latter does not coincide with the country where the staff member is supposed to exercise his functions on behalf of the organization.

11. The fact that the General Assembly, in its relevant resolutions, has expressed a will to take into account neighbouring areas of France in the post adjustment methodology changes nothing with regard to the Commission's lack of competence to change the definition of Geneva as a duty station. The General Assembly, in common with ICSC and the other organizations that have accepted its jurisdiction, remains legally bound by the Commission's statute until it is amended.

2. The changes envisaged contravene the staff regulations of the International Labour Organization and would require their amendment

12. The ILO staff regulations do not define the term "duty station", and while they contain many references to "Geneva" as a duty station, there is no provision, either general or relating to post adjustment, defining the geographical extent of the term Geneva. One of the articles, article 3.14 (d), (e) and (i) relating to the education grant, uses the term "area of the duty station", which "for the purposes of this article" defines Geneva as territory within a radius of 25 kilometres from Geneva. A further provision, article 4.3, relating to the recruitment of staff in the General Service category, defines as locally recruited in Geneva French nationals living within a radius of 25 kilometres from Geneva and all others, other than Swiss nationals, who have been continually living for one year within the same radius. From this it may be deduced a contrario that for the purposes of the other provisions of the regulations, including those relating to post adjustment, the Geneva duty station does not extend to the border area but must be understood in accordance with the normal, i.e., geopolitical, meaning of the term.

13. Application of a Geneva post adjustment taking account of price data collected in neighbouring areas of France would thus necessitate an amendment of the staff regulations to include neighbouring France in the definition of the Geneva duty station. Such an extension of the definition of the duty station to neighbouring areas of France would involve considering as the duty station a place that is neither in the headquarters country nor, properly speaking, in the country of assignment. Strictly speaking, the assignment is in fact to the place where the staff member discharges the functions assigned to him in the service of the Organization and for the exercise of which he necessarily benefits from a special legal regime guaranteed by a headquarters or other specific agreement concluded with the country in whose territory these functions are exercised.

14. ILO has a headquarters agreement with Switzerland granting its officials the protection that is essential to the exercise of their functions. This is not the case with regard to France, which, moreover, has not ratified the Convention on the Privileges and Immunities of the Specialized Agencies. As a result, the ILO cannot require of France that it act as host to its staff members and grant them a legal regime analogous to that granted by Switzerland. Staff members do not have a right to establish their residence in France. There is simply a tolerance of such residence that some, but not all, of those concerned may avail themselves of only at their own risk and peril and to the extent that such a choice is not likely to interfere with the normal exercise of their duties. As soon as the attitude of the French authorities began to raise

fears that the tolerance thus far shown to international civil servants in fiscal matters might be reconsidered, ILO stated clearly that it reserved the right to require its officials to reside in the territory of the host country and that it would not reimburse any tax that might be paid by its staff members living in France. It now draws the attention of its staff members, in individual contract offers as well as in the information brochure for staff members arriving in Geneva, to the risks that may be entailed in electing to reside in France (see the appendix to the present annex, containing an extract from the information brochure).

15. Amendment of the definition of the Geneva duty station contained in the staff regulations is thus not a decision that ILO can take without weighing all the consequences,[a] which go well beyond the question of determining post adjustments. To seek to extend the definition of the duty station to an area extending beyond the borders of the host country would be tantamount either to vitiating the concept of its normal meaning or to seeking unilaterally to impose on a country other than the host country a regime considered inseparable from exercise of the organization's functions, or to renouncing the regime.

3. The changes envisaged would violate the fundamental principles of labour law and of the international civil service

16. The first of these principles is that of equal treatment. To rectify a supposed inequality vis-à-vis staff in other headquarters duty stations, the changes envisaged would introduce very real inequalities among staff working in Geneva.

17. While certain staff may now complain about unequal treatment, it is not those working in other headquarters duty stations but those living in Geneva, who receive the same post adjustment as those living in France while the latter have lesser expenses. Those staff are not complaining only because they take the view that the legal security and practical advantages of living in Geneva, given the inconveniences and uncertainties inherent in crossing an international border - such as the ever-present threat of taxation of staff living in France or restrictions on the import of certain goods, the requirement to declare imported goods, and the difficulties and delays occasioned by crossing the border every day, offset possible advantages related to differences in the cost of living.

18. To take into account the cost of living in neighbouring areas of France in establishing the Geneva post adjustment would create unjustifiable inequalities among Professional staff working in Geneva and between Professional and General Service staff working there.

19. Inequality among Professional staff would exist just as much with a single index as with two indices.

20. A single index would have the effect of penalizing staff living in Switzerland in comparison with those living in France. In order to achieve the same purchasing power, they would need either to settle in France or to shop in France, with the consequent need to obtain residence permits or the requisite visas and the loss of time and administrative and customs difficulties that would entail. One group of staff would be particularly penalized, those having no right to reside in France owing to their nationality or length of contract.

21. Two indices would infringe the principle of equal pay for work of equal value, guaranteed in the ILO Constitution and Convention No. 100 of 1951 on equal remuneration. Two staff members at the same grade, working in the same duty station, would receive different pay depending on whether they lived on one or the other side of the border.

22. Inequality between Professional and General Service staff would exist with a single index as with two indices. A certain number of General Service staff members are recruited in the border area and even those not recruited there frequently settle in that area. Under the Flemming principle they receive salary calculated on the basis of the best prevailing conditions of employment in Geneva, without limitation or reduction relating to proximity to an area where the cost of living is lower. It would, moreover, be inconceivable for companies in Geneva to offer lower salaries to workers living in France because of the lower cost of living on the other side of the border. Such an approach would be viewed as a violation of the principle of "equal pay for equal work". How could it then be imagined that the work of General Service staff could be acknowledged to have equal value whichever side of the border they lived on and for the same logic not to apply to Professional staff?

23. Another principle of labour law which would be violated by the envisaged changes is the right freely to dispose of one's wages, set forth in ILO Convention No. 95 concerning the Protection of Wages of 1949. A methodology that would force staff to shop in a certain geographical area in order to preserve the purchasing power that they had enjoyed until that time would indirectly limit their right freely to dispose of their wages.

24. Another issue is the compatibility of the proposed changes with the principle of respect for acquired rights. A change affecting an allowance that represents half the net remuneration and which would have the effect of reducing such remuneration by 5 to 6 per cent, according to the indications given by the Commission secretariat, must be viewed as a substantial modification of conditions of employment. It should therefore be examined in depth from the standpoint of respect for acquired rights.

25. In conformity with the case law of the ILO Administrative Tribunal (judgement No. 61, in re Lindsey), it should be asked whether the proposed change upsets the economics of the employment contract or breaches the basic conditions of employment that motivated staff members to enter the service of the Organization. In that connection, one must take an objective view and ask, not whether a certain condition of service caused the staff member to join or remain with the Organization, but whether the conditions of employment offered were likely to have a decisive influence on the staff member's intentions. Clearly, an allowance representing half the net remuneration must be seen as a determining factor in the decision to accept a job in Geneva. Moreover, since the change, which would substantially reduce this allowance, would be based on altering the definition of Geneva as a duty station to include places of residence in France, something that would be contrary both to geopolitics (Geneva not being in France) and to the natural meaning of the concept of duty station, this would mean that a fundamental element of the methodology was being altered, thereby posing a threat to acquired rights.

26. The reasons for the envisaged change of methodology are also relevant for determining the existence of a violation of acquired rights. The ILO Administrative Tribunal accepts that the organizations may take action detrimental to the financial interests of their staff if such action is justified on objective grounds, such as the organizations' financial situation.

However, the changes envisaged here would not be made for objective reasons, namely, to enable the organizations to meet a pressing financial need, but to respond to General Assembly concerns that are unjustified, being based on errors of fact and law.

4. The technical validity of the methodology recommended by the Advisory Committee on Post Adjustment Questions for calculating a single index is questionable

27. This is only natural, since the Committee and the consultants engaged to advise it were instructed not to consider the legal and administrative aspects of the issue, which, as was seen above, bear essentially on the fact that, unlike other headquarters duty stations, especially New York, the system's base, an international border separates the two geographical areas in which staff working in Geneva reside. Given these constraints, the consultants recommended a model that was based on correct statistical principles, in that it took into account an economic area in which consumer transactions are conducted and, in general, sought to reflect the complexity of the situation. This model was based on detailed data that could be obtained only with the participation of the staff. Nevertheless, as the consultants themselves recognized, it presented several deviations from the existing post adjustment system. The methodology recommended by ACPAQ is a variant of this model, greatly simplified to avoid the need for staff participation and to meet the deadline set by the General Assembly in its resolution.

28. One major criticism that can be made of the methodology recommended by ACPAQ is that it is based on the assumption that staff members purchase 100 per cent of goods and services in the country in which they reside. This is not in fact the case. Such an approach is contrary to the principle, enunciated by the Commission in 1995, that it must determine the expenditures actually incurred by staff at each duty station, which depends on where those expenditures are made and not on some abstract definition of duty station; it could therefore invalidate the statistical results of the survey. What is more, this assumption destroys the rationale for establishing a single index, for if staff members make all their expenditures where they reside, it is arbitrary to apply to them a composite index that reflects neither the expenditures of staff living in France nor those of staff living in Switzerland.

29. Another criticism concerns the proposal to collect price data in France without staff participation; serious doubts can be expressed about the validity of the results of a survey in which price data would be established by the Commission secretariat with the assistance of administrations that have no particular expertise or knowledge to determine objectively which sales outlets are used by staff residing in France or what goods and services are available in neighbouring France.

30. In addition, the methodology presents major deviations from the current post adjustment system. For instance:

(a) The consideration of out-of-area expenditures results in double counting, since such expenditures are already included in the calculation of the index for Geneva;

(b) The methodology does not allow for the fact that some staff members have no legal or practical access to the goods and services available in France;

(c) The methodology proposed for comparing housing costs differs from that used in other headquarters duty stations.

5. The envisaged changes would have an adverse effect on conditions of employment and personnel policy

31. The changes would substantially reduce the remuneration of Professional staff working at the duty station, namely, ILO headquarters, which employs 70 per cent of the organization's Professional staff. Such a reduction, coming at a time when the International Labour Office is making increased efforts to become a centre of excellence for employment and labour issues in order to respond to the challenges of globalization, will only add to the difficulties of recruiting and retaining the highly qualified staff that it needs, in the face of competition from other international institutions which can offer wages 30 to 40 per cent higher than those of the United Nations common system.

32. They would increase overlapping between the Professional and General Service salary scales, thereby aggravating internal problems of relative conditions of service and loss of motivation of Professional staff, not to mention the unequal treatment mentioned above.

33. They would ultimately reduce the pension adjustment rate resulting from application of the so-called Washington formula, thereby lowering pensions. Staff residing in Geneva would thus be doubly penalized, first in terms of their remuneration and then in terms of their pensions, for once they retire the practical difficulties of offsetting the loss of income by going to France to shop will be compounded.

34. In general, the envisaged changes would create among the staff a climate of unrest and a risk of loss of motivation that would be detrimental to the efficient functioning of the organizations at a time when all of them, including ILO, have undertaken a process of reform and restructuring that poses difficult challenges for both their staff and their administrations and demands from them a common commitment and increased motivation.

6. The envisaged changes could undermine the integrity of the common system

35. According to the consistent case law of the ILO Administrative Tribunal, as reaffirmed, _inter alia_, in judgement No. 1265 (_in re_ Berlioz and others), ILO, before introducing elements of the common system into its own rules, has the duty, on pain of censure by the Tribunal, to make sure that the texts that it is thereby importing into its own rules are lawful. Therefore, before applying any decision by the Commission to establish a single index or two indices reflecting price data collected in neighbouring France, the Office's Director-General will have to make sure that it is lawful. In so doing, he is bound to notice the serious problems that this decision creates for the Office's staff regulations and for certain fundamental principles of labour law and of the international civil service, as well as the questionable technical validity of the methodology proposed by ACPAQ, particularly in relation to the current post adjustment system, and he will have to bring these problems to the attention of the Governing Body, which is responsible for approving amendments to the staff regulations.

36. Given the mandate of ILO and the tripartite composition of the Office's Governing Body, the latter can be expected to be particularly sensitive to any potential breach of the principles guaranteed in the Constitution and in the basic conventions of ILO.

37. If the Director-General and the Governing Body come to the conclusion that ILO cannot implement the Commission's decision, the Commission and the common system will lose credibility. If, on the other hand, the Governing Body decides to implement the decision, there is no doubt that the staff will appeal en masse and that, if these appeals are accepted by the ILO Administrative Tribunal, they will cause the Commission and the common system to lose credibility.

7. The envisaged changes will create further administrative complications and entail administrative costs for the organizations

38. The first complication will stem from the difficulties for the organizations of responding to the Commission's request that they cooperate with its secretariat on the cost-of-living survey to be conducted in neighbouring France, in order to compensate for the staff's refusal to participate in the survey. With the best will in the world, the ILO administration cannot substitute for the staff in, for instance, constructing a list of outlets in the border area or determining the list of articles available there. It has neither the knowledge nor the resources to ensure that the results of its cooperation with the Commission secretariat are technically valid.

39. Other complications will have to do with the foreseeable reaction of the staff. The Office could find itself paralysed by a flood of appeals and by protest and strike movements. It is worth recalling its experience between November 1990 and January 1994 on the issue of the change in the definition of pensionable remuneration (in re Bangasser, Dunand, Marguet-Cusack and Sheeran, judgement No. 1330). When the Office first tried to make this change, the staff went on strike during the November 1990 session of the Governing Body. Unable to conclude its work, the Governing Body was forced to adjourn prematurely. The administration faced a considerable additional workload when it had to deduct from the staff's wages the hours spent on strike (almost all the staff came out on strike, with the exception of essential services). Over the next six months, protracted negotiations took place between the administration and the staff union. Intense discussions also took place with members of the Governing Body, and ICSC was consulted in March-April 1991. Although an agreement was reached, more than 80 staff members filed internal appeals after the amendment to the staff regulations took effect. In accordance with the staff regulations, these appeals were taken up officially and individual replies were sent. The procedure in force at the Office provides for the Personnel Department to analyse an appeal, the Office of the Legal Adviser to consider it and the Director-General to consider it and take a final decision. Once this procedure was complete, the complainants appealed to the ILO Administrative Tribunal. The case lasted two and a half years, from the filing of the internal appeals in July/August 1991 to the Tribunal's decision in January 1994. As it turned out, the Office did not have to act on the judgement because the latter was in its favour. However, the exercise kept the staff of the departments concerned extremely busy, although no precise record was kept of the time spent on it. This demonstrates the need for the Organization to be extremely cautious about applying decisions which may be the subject of a legal appeal. If the methodology for calculating the Geneva post adjustment is changed, the Office believes that almost all the Professional staff in Geneva (about 500) would

contest the decision. Protest and strike movements and appeals could bring the Office's administrative services to a virtual standstill.

40. The Office reserves the right to review the issue of administrative consequences of applying a new methodology in greater detail at the Commission's forty-sixth session (July 1997). For now, what is absolutely clear is that a change of methodology would further complicate an already complex system, at a time when all the organizations are being pressured by their member States to rationalize and reduce their administrative costs. In particular, the application of several indices, depending on staff members' date of entry on duty and/or place of residence, would create a considerable burden of extra work and the organizations would be forced to institute a costly and complex system of periodic verification of their staff's effective place of residence in order to combat the risks of fraud that the introduction of two indices would entail.

C. Possible solutions

41. The Commission has asked the organizations to submit their views and comments on all viable options that would be responsive to the General Assembly's request, and it intends to decide at its forty-sixth session (July 1997) on the course of action to take, including any option other than the two already proposed that would meet the General Assembly's concerns.

42. In the present comments, ILO has analysed the General Assembly's concerns and aims and has concluded that they are unjustified, in that they are based on misinterpretations of the concept of equality of treatment and of the principles and aims of the post adjustment system. It has examined the envisaged changes in the methodology for determining the post adjustment at Geneva from the legal, technical and administrative standpoints and from the standpoint of personnel policy and is forced to conclude that they meet with objections so serious, particularly in terms of legality and equity, that if ILO were to implement them it would, beyond a shadow of a doubt, be the object of massive appeals by its staff, which are very likely to be accepted by the ILO Administrative Tribunal.

43. In the light of these conclusions, the Office has no choice but to recommend retaining the methodology for calculating the post adjustment that has been applied in Geneva for over 30 years and with which neither the administration nor the staff of the Office have had any problem until now. In calculating the Geneva post adjustment index on the basis of price data collected only in Switzerland, this methodology takes into account the specific characteristics of Geneva and is fully compatible with the purposes and principles of the post adjustment system. The Office does not see any need to change it, whereas it is conscious of all the harmful effects that the changes requested by the General Assembly could have on the Organization's effectiveness and competitiveness and on its ability to put through the changes in its programmes and working methods requested by its Governing Body.

44. In these circumstances, ILO is hard pressed to propose other options that, in the Commission's words, would be responsive to the General Assembly's request. It feels that the Commission would be entirely within its mandate and its responsibilities as an objective, impartial technical organ to point out to the General Assembly that what it is asking is unjustified, would meet with insurmountable objections, would have harmful consequences for the organizations based in Geneva and could undermine the integrity of the common system. If the Commission nevertheless feels bound to act on the Assembly's request, the Office feels that the only other option that it might envisage would be to apply a

methodology that took account of the specific constraints and characteristics of each organization.

Notes

[a] Nor, moreover, without prior consultation with staff representatives and approval of the Governing Body.

Appendix

EXTRACT FROM THE INFORMATION BROCHURE FOR STAFF MEMBERS NEWLY ARRIVED IN GENEVA (IN PREPARATION)

ILO officials may reside in Switzerland or in France. However, they should be aware that, inasmuch as the organization's headquarters is in Geneva, it is with the Government of Switzerland that ILO has concluded a detailed headquarters agreement comprising specific provisions guaranteeing the status, immunities and privileges of its officials. This agreement is of course not applicable in France. Pending its promised ratification of the Convention on the Privileges and Immunities of the Specialized Agencies, France is bound only by its obligations under the Constitution of ILO, which have been confirmed and consolidated in practice for many years. Officials who are contemplating residing in France are advised to seek further details concerning this practice and to make the necessary inquiries regarding the formalities that must be completed in order to settle there.

Annex IX

COMMENTS BY THE INTERNATIONAL TELECOMMUNICATION UNION

A. Introduction

1. The following views and comments of ITU on a change in the post adjustment index for Geneva are in response to, and indeed were requested in, the letter dated 15 May 1997, which the Chairman of the Advisory Committee on Post Adjustment Questions (ACPAQ) and Vice-Chairman of the Commission, addressed to the Secretary-General of ITU.

2. Not only have the present comments been prepared for the consultations which the Chairman of ACPAQ will hold - jointly and individually - with the Geneva-based organizations of the United Nations common system from 11 to 13 June 1997 in Geneva, but they are also destined to be transmitted, as such and in toto (i.e., including appendices I and II to the present annex) to the Legal Counsel of the United Nations, so that he can take them into account when elaborating his legal opinion on the subject.

3. Given the steady rise in the number of staff complaints brought before the administrative tribunals (Administrative Tribunal of the International Labour Organization (ILO) in the case of ITU) and the consequent increase in cost and expenses to be borne by the specialized agencies to defend themselves against such suits, and bearing in mind the duty, confirmed by the ILO Administrative Tribunal, of any organization that introduces elements of the common system in its own rules to make sure that the text it imports is lawful (ILO Administrative Tribunal judgements Nos. 1265, 825, 382), it is imperative that any solution adopted by ICSC and proposed to the United Nations General Assembly be based on sound legal principles and reasoning, in order to avoid protracted legal disputes with staff members, if and when the proposal, once adopted by the Assembly or by ICSC itself, is implemented.

B. Preliminary issues

4. The objective, as stated by the General Assembly, is, inter alia, to establish a post adjustment index for Geneva that ensures equality of treatment with staff in other headquarters duty stations (General Assembly resolution 50/208). Several options have been advanced by ICSC to achieve that objective which raise a considerable number of questions. Not all of these questions can be answered, and some reflect, in and of themselves, the views of ITU, particularly the latter's doubts with regard to those options.

5. In what manner has ICSC demonstrated that the present system does not already meet the objective expressed above? What is the legal basis for the stated objective?

6. By what methodology is equality of staff in different duty stations to be measured?

7. What is the legal basis for linking price surveys to the definition of the duty station?

8. Does the fact that data collected in New York is not used in establishing the New York post adjustment index constitute de facto discriminatory treatment

of staff in the rest of the common system, where the same type of data collection is imposed and used to establish the respective post adjustment index?

9. Can the organizations, though always willing to encourage staff to participate in all forms of data collection surveys and to foster staff/ management cooperation, legally replace staff in the selection of "outlets", weighting patterns or the list of available items?

C. To the two solutions proposed by the Commission

10. Do the recommended solutions, or the means required to implement them, exceed the statutory jurisdiction and the mandate of ICSC?

11. Do the recommended solutions require changes to the definition of "duty station" used by any agency concerned? If yes, as is the case for ITU, then:

(a) What should be done if the definition were contained in its basic instruments?

(b) Would the change in definition encompass geographical areas in which the agency does not have the requisite legal basis or framework for taking actions that affect the rights of its staff members?

12. Will implementation of the solution require any changes in the staff rules and regulations of the agency concerned, which would violate the fundamental employment principles of the said agency?

13. Will implementation of a solution, as adopted by the General Assembly, produce results that prejudice the acquired rights of staff members? What are the acquired rights of staff members in this matter? At what level or to what extent are acquired rights of staff affected? Does the methodology for the application and implementation of solutions have safeguards to prevent such an effect?

14. How can it be ensured that, in the process whereby each agency meets its obligation to ensure the correctness of ICSC or the General Assembly, i.e., common system decisions, divergent conclusions will not be reached at the level of the various agencies involved that could splinter the common system?

15. If the definition of "duty station" is not or cannot be extended beyond the country in which the agency's headquarters is located, what is the legal basis for including prices from areas outside the State of that "duty station"?

16. If the place of residence is to be taken into account in the new calculation of the post adjustment index for Professionals, won't this automatically create an inequality of treatment between staff in the Professional and General Service categories, since for the latter the Fleming principle only takes into account the best remuneration conditions in Geneva?

17. Such a "French border area" would have to be determined: what could or should be the legally tenable criteria for geographically defining that area? How deep and for what reason would one go into "la France voisine" for a price survey? Should an artificially and thus necessarily arbitrary radius of a specified number of kilometres around Geneva be retained, or should legally and could practically this area be defined according to the most remote place in

France where indeed (a) staff member(s) of any one of the various agencies of the common system working in Geneva actually has his/her/their residence?

18. Does the proposed methodology properly consider differences in the nature of the Geneva duty station, so as not to prejudice Geneva staff compared with other duty stations in the common system?

19. Generally, can any solution that makes the determination of the post adjustment index dependent on a staff member's actual or potential residence in a State other than that of the agency's "seat" (ITU) or headquarters (which is therefore the same staff member's sole "duty station"), be legally justified under the rules of the currently prevailing principles of international law?

20. Whichever of the two options is (hypothetically) adopted for a new post adjustment index for Geneva, can either of them, legally and on a practically justifiable and sound basis, also be applied and implemented to international civil servants working and residing in other parts of Switzerland, e.g., the Universal Postal Union (UPU) at Berne or staff based at Lausanne, to which the current Geneva post adjustment index has always been and still is applied?

21. What is the legal justification for establishing remuneration levels, via a Geneva post adjustment index on the sole basis of personal decisions of staff members? What would happen if the cost of living in France became higher than that in Geneva?

D. Specific issues related to option 1

22. Option 1 would create a single post adjustment index based on prices both in Geneva and in the border areas of France. This envisaged option raises further questions.

23. Can the inequalities that would arise between staff members living in Switzerland and those living in France be legally justified, taking into account the fact that residence in France is not a "right" which can be guaranteed by the organization, but only a "facility" de facto accorded and at any time revocable?

24. What would be the legal justification for penalizing staff members who are legally barred or severely restrained from either residing or shopping in France? Would this not introduce de facto a pay level based on nationalities and that would be wholly in contradiction with the fundamental principle on which common system remuneration is based?

25. Can it ever be justified to "penalize" or financially disadvantage a staff member who could enjoy the revocable "facility" of residing in France, but - for whatsoever reason - prefers to live in Geneva, which after all is his/her "duty station"?

26. Does option 1 itself adequately take into account the special nature of Geneva as a duty station, and the legal problems related thereto, in comparison to other duty stations in the common system?

27. Wouldn't such a single post adjustment index, which, at least for the time being and for the near future, would unavoidably disadvantage those staff members residing in Geneva, imply an undue incentive for them to transfer their residence from Switzerland to France, and could this not be seen by Switzerland,

being the host country of ITU and Geneva its duty station, as a diplomatic "affront"?

28. To what extent could it be justified to base a post adjustment index on one very specific pattern such as, in this case, residence, whereas usually factors like common expenditure weights only take account of very general specifications.

E. Specific issues related to option 2

29. Option 2 would create two separate post adjustment indexes one for Geneva and one for France, presumably to be applied to staff members based on their respective place of residence.

30. Is the creation of two post adjustment indexes for "the same duty station" legally permitted at all under, or compatible with, the United Nations post adjustment system?

31. Doesn't option 2 violate basic principles of the international civil service based on "equal pay for equal work" and on the equality of treatment of staff members performing the same functions?

32. Are there any precedents for such a discriminatory treatment during a staff member's time of active service just because of his residence in a State other than that of the agency's actual "seat" (ITU) or headquarters and thus his "duty station"?

F. Methodological issues concerning option 1

33. The consultant Runzheimer has proposed a methodology to institute a single post adjustment index for Geneva that also includes prices from the nearby French border area. The consultant acknowledges that there are many options for each element of the price survey.

34. What are the legally sound and sustainable criteria for determining which of the different options for the elements of the price survey should be contained in a final methodology?

35. Is it legally valid and methodologically sound, when determining a new post adjustment index for Geneva, to base some of the survey elements on the experiences of non-agency employees, i.e., those outside the common system, an approach so far unknown with regard to the Professional category?

36. Is it legally valid and methodologically sound to base some of the survey elements on data or other input provided by local, regional or federal authorities in both Switzerland and France?

37. What is the validity of creating an artificial "statistical area of the duty station" instead of simply retaining the duty station?

38. The fact that some staff members residing in Switzerland might, from time to time, buy some goods in France, within legally authorized limits, is already taken into account in the present post adjustment index through the "out of area" part of that index. Wouldn't the proposed solution introduce a double counting of these expenses?

39. Doesn't the ACPAQ assumption that staff living in France purchase 100 per cent of their goods and services in that country run counter to the Commission's conclusion in 1995 that "ICSC needed to determine the actual expenditure of staff members at any given duty station; that depended on where they actually made their purchases and not on the abstract definition of a duty station"?[a]

40. Doesn't the proposed establishment of the single index by weighting a French index with a Swiss one according to the number of staff living in each country, defeat the basic assumption that staff living in France purchase 100 per cent in France and those living in Switzerland, 100 per cent in Switzerland?

41. Are the over-simplifications made by ACPAQ with regard to Runzheimer's very technical approach, with a view to meeting the 1 January 1998 deadline, compatible with the post adjustment methodology established by ICSC?

42. Is the methodology proposed for the Geneva area compatible with that used in New York with regard to collection of housing prices? In other words, is it fair to compare the price of a studio in Ferney-Voltaire with the price of a studio in Manhattan, even if some weighting were to be established, when there is no possibility that Interorganizational Study Section (IOS) on Salaries and Prices of the Coordinated Organizations can check the external source of data?

43. Is it legally justifiable, when establishing the single Geneva post adjustment index, to take into account price rates that are not accessible to staff members living in a given place? For example, staff living in Geneva cannot buy their telephone services, electricity, insurance policies, etc., in France and vice versa.

44. The consultant states that the new methodology must be consistent with the present post adjustment system and must produce a single post adjustment index for Geneva that fully represents the cost of living of all staff working in Geneva. Is this really the proper legal test for analysing the proposed methodology? Furthermore, has the consultant ever demonstrated that its proposed methodology is legally acceptable?

G. Methodological issues and administrative and practical aspects concerning option 2

45. On the assumption that the present methodology for establishing a post adjustment index in any duty station and in New York are fully identical, and if such a method were to be used to calculate the post adjustment index for Geneva or New York and the post adjustment index for "France voisine" and others then we would not have specific methodological difficulties.

46. However, it is obvious that the implementation of a new post adjustment index, irrespective of the option that is finally chosen, will raise a great number of administrative and practical questions, in particular in terms of, *inter alia*, modifications to be introduced in the electronic management of salaries by the organization concerned.

47. It has to be emphasized that option 2 referred to by the Commission (i.e., one post adjustment index for Geneva and one for France), would generate many more administrative and practical problems. On the assumption that the post adjustment index to be applied in each instance would take into account the

actual permanent place of residence of each staff member, i.e., the Geneva post adjustment index applicable to staff members residing in Switzerland, and the France post adjustment index applicable to staff members residing in "France voisine", the organization would then have to ascertain regularly the residence of its staff members.

48. With option 2, the organization would have to obtain confirmation of permanent residence from staff members regularly (annually or even more frequently), in order to determine which of the two post adjustment indexes would have to be applied for each monthly payroll.

49. In this respect, it is to be emphasized that, on the one hand, organizations have no means whatsoever and, one could argue, no right, to carry out "police inquiries" in order to ensure that residence declarations made by staff members are accurate. On the other hand, if the organization had such means at its disposal, the administrative burden resulting from actions intended to recover undue amounts received by a staff member having declared that he resided in Geneva - and thus benefiting from the Geneva post adjustment index - but actually residing in France, would generate considerable supplementary expenses in terms of money and of human resources. Furthermore, disciplinary action would most probably have to be taken by the organization on the grounds of false declarations; neither should one rule out the possibility of having to bring such a case before a national tribunal, if the matter was discovered only after the staff member had left active service, and reduction from payment due to him was no longer possible.

50. ITU considers that such administrative actions would certainly have a detrimental effect on the social morale of the organization concerned.

H. As to the so-called option 3

51. It is with regret that ITU notes, from the background documentation, that option 3, i.e., the continuation of the "status quo" system, was completely deleted by ICSC at its forty-fifth session (Paris, 21 April-2 May 1997, in a conference room paper dated 2 May 1997, issued in English only, without, however, any reason being given for that deletion. Instead, the option 3 that should now be considered, consists of any "other options which will meet the General Assembly's request".

52. If that "request" refers to the "objective" mentioned in paragraph 4 above and is meant to lead to a reduction, in one way or another (see options 1 and 2, dealt with above), of the post adjustment index currently applied at Geneva (and at Berne for UPU), then ITU readily admits that it cannot even imagine any such "other options which ..." (see end of para. 34 above). It sees none.

53. This being the case, ITU has no views or comments whatsoever to offer in respect of this "so-called option 3"; it leaves this up to those who might have more imagination!

I. Some more detailed ITU specific and issue-related comments

54. Owing to the very short amount of time available to make a comprehensive and in-depth presentation of its views and comments, the Union has, in the foregoing sections, deliberately limited itself to asking pertinent and critical questions that reflect its serious doubts on the legal, methodological and

practical soundness of the envisaged solutions, on which it has been requested to give its views and comments (see paras. 1 and 2 above). These questions themselves very often contain or indicate the Union's rather negative and sceptical position with regard to the envisaged solutions for any change in the post adjustment index for Geneva.

55. Notwithstanding, some ITU-specific aspects and some general legal considerations are nevertheless dealt with, albeit briefly, but in somewhat more detail, in appendix I to the present annex. Again, owing to lack of time, because of urgent internal work for the forthcoming ITU Council session (18-27 June 1997) resulting in necessary division of work within the Legal Affairs Unit of ITU, the views and comments are presented in appendix I. The views and comments contained in appendix I form an integral part of the present ITU position paper. It can thus be concluded by ITU that, in the light of the very difficult questions and problems to be answered and resolved satisfactorily and in a legally as well as practically acceptable manner, in the opinion of ITU, application and implementation from 1 January 1998 onwards of any solution or option so far presented, appears to be completely impossible.

56. Last but not least, ITU refers, at this stage and in the present context, to its preliminary comments of the Legal Affairs Unit in 1995 on the report of the legal consultant to the ICSC secretariat on the subject, which is once again under consideration now and in the ITU position paper. For the sake of completeness, those 1995 comments can be found in appendix II to the present annex, as ITU considers them essentially still valid, and they might prove helpful to the United Nations Legal Counsel, who should not base his legal opinion on the view of the legal consultant alone.

* * *

57. It should be noted that, currently, ITU staff members are required to update personal information regarding their family status, including their permanent home address, every two years.

Notes

[a] Official Records of the General Assembly, Fiftieth Session, Supplement No. 30 (A/50/30), para. 314.

Appendix I

ADDITIONAL COMMENTS BY THE INTERNATIONAL TELECOMMUNICATION UNION ON SOME SPECIFIC LEGAL PROBLEMS RELATING TO THE QUESTION OF THE POST ADJUSTMENT FOR GENEVA

A. Violation of the Commission's terms of reference (concerns both options)

1. The competence of the International Civil Service Commission (ICSC) in the matter of post adjustment is limited to the classification of duty stations for adjustment purposes. The Commission is not entitled either to modify the idea of "duty station" itself or to make the organizations do so. Either of the options envisaged, however, would seem to imply an extension of the idea of "duty station" to cover the French border area around Geneva.

B. International Telecommunication Union objection of an institutional nature: amendment of the International Telecommunication Union Convention (Geneva, 1992) (concerns both options)

2. The idea of "duty station" is not defined in the International Telecommunication Union (ITU) staff regulations and rules. However, it has to be interpreted in the light of the ITU Convention (Geneva, 1992), which is one of the Union's basic legal documents, supplementing the provisions of the ITU Constitution (Geneva, 1992).

3. No. 67 of the Convention, which deals with the incorporation into the ITU internal legal system of United Nations decisions on post adjustment, states that the Council (the executive body given a mandate to that effect by the Plenipotentiary Conference) shall adjust as necessary the "post adjustment for Professional and higher categories ... in accordance with decisions of the United Nations for application at the seat of the Union" (emphasis added). The headquarters of the Union is quite precisely and restrictively defined as being "Geneva" (ITU Constitution, No. 175). In this very precise context, the Convention thus clearly equates the "duty station" with the headquarters, namely, "Geneva".

4. Any extension of this precise idea of the "duty station" would thus entail an amendment to No. 67 of the Convention, an amendment that could only be adopted by the Plenipotentiary Conference, which meets every four years. The next meeting of this governing body is scheduled for October 1998, and any amendments it were to adopt would probably not enter into force before 1 January 2000 at the earliest. Furthermore, such an amendment would only be acceptable and possible if it did not call in question other fundamental legal elements or principles of ITU as far as the treatment of its staff is concerned.

5. For this reason alone, no change affecting the precise idea of "duty station" as explained above could be implemented or applied by ITU from 1 January 1998, as the United Nations General Assembly apparently wishes.

C. Incompatibility between the extension of the definition of "duty station" and the organization's need for legal security in order to fulfil its functions (concerns both options)

6. According to the most widely accepted definitions, a person's duty station is the place to which that person is sent by his or her employer in order to occupy a post or perform duties.

7. In order to determine a duty station, the employer therefore has to take into consideration objective elements relating to the performance of the employee's duties and the organization's operating needs. As far as international organizations are concerned, the duty station thus depends on the fulfilment of a number of objective conditions, including an absolute assurance by the State or States concerned that the organization and its staff will be able to perform their duties without hindrance, to reside and move about freely in the territory in question and to enjoy special privileges and immunities there. These conditions are clearly not fulfilled for ITU as far as France is concerned. Accordingly, ITU is not legally entitled to define "duty station" in such a way as to extend it to a State other than the one in which the Union and its staff perform their duties, inasmuch as it cannot impose on a State with which it has no headquarters agreement what it can require of a State where it has its headquarters or, at the very least, regional offices.

8. The corollary to this comment is that ITU staff members do not enjoy a right to reside in France guaranteed by ITU on the basis of a headquarters agreement or the equivalent, but merely a facility (see annex IX to the present report, para. 23). This facility, moreover, does not even exist for some nationalities. The residence factor thus seems to be too inadequate, subjective and unreliable to serve as a basis for ITU to modify the idea of "duty station", which it has clearly defined.

Appendix II

PRELIMINARY COMMENTS OF THE INTERNATIONAL TELECOMMUNICATION UNION ON THE REPORT OF THE LEGAL CONSULTANT TO THE COMMISSION SECRETARIAT, WHICH FORMED PART OF THE 1995 REPORT OF THE COMMISSION[a]

1. The present appendix consists of a preliminary set of comments, observations and questions by the Legal Affairs Unit of the International Telecommunication Union ("ITU") concerning the legal analysis contained in the report prepared by the Legal Consultant to the International Civil Service Commission (ICSC) secretariat pursuant to a request contained in General Assembly resolution 48/224. The report appears in annex XIV to the report of the Commission to the General Assembly at its fiftieth session.[a] In preparing these comments, ITU has chosen to follow a paragraph-by-paragraph approach in order to address all of the legal issues raised by the consultant. Given the short period of time between receipt of the report and the opening of the ICSC meetings, the comments are only preliminary observations and ITU reserves the right to comment more fully on this important matter at a later date.

2. Before entering into the specifics of the report, a few general remarks are in order. First, this is a significant matter, as the post adjustment index currently represents approximately 50 per cent of the total remuneration of staff assigned to Geneva. For that reason, any modification to the current system of calculating price surveys would have a serious impact on staff salaries and, given the present imbalance between salaries and post adjustment, it should be considered whether it is necessary to revise the whole post adjustment index system. Second, as is recognized throughout the document, there are many unanswered questions concerning the post adjustment index and the present system, and it would be imprudent to move too quickly or to take any decisions until those questions are resolved. Third, the likely salary impact of the proposed alternatives needs to be studied so that the magnitude of the proposed change is known and the legal risks then can be fully assessed.

A. Issues involved

Paragraph 1

3. Paragraph 1 of the report is of pre-eminent importance, as it frames the legal issues in a way that dictates the structure and outcome of the report. In the view of ITU, the issues, as stated, are incomplete and the priorities it reflects are misplaced.

4. The first issue is to determine the legal basis for the present system and methodology of price surveys.

5. While the report states that the geographical scope of the price surveys is linked to the definition of duty station, there is no proof of this assertion. To the contrary, although the term "duty station" is defined in the publication entitled "Post Adjustment System" (May 1994),[b] the operative language in that publication for conducting price surveys does not link such surveys to the duty station, but refers instead to comparisons between the base city and the "given location".

6. It is also pointed out in the report that price surveys in other headquarters duty stations include all areas where staff live, but that in Geneva such surveys have been limited to "the city of Geneva".[c] This difference cannot be explained by the definition of duty station, which in each case refers only to a city. (Indeed, as the consultant points out, even though New York is listed as a duty station, price surveys are conducted in adjoining States.)

7. The second issue concerns the notion of acquired rights.

8. As presently stated in paragraph 1 (a) (ii) of the report, this issue is too narrowly framed by linking acquired rights only to the existing definition of the Geneva duty station. Instead the issue should be framed more broadly, which would require analysis of legal issues that the consultant either glosses over or ignores in his analysis.

9. More properly stated, the issue is whether staff have an acquired right to a certain level of remuneration, based on a method of calculation, that would be violated as a result of a significant change to that level owing to a new method of calculation. Any analysis of the jurisprudence must be based on a proper statement of the issues, since it has already been recognized by the Administrative Tribunals that a fundamental or essential change to staff conditions infringes on an acquired right.

10. Indeed, the issue of acquired rights, correctly framed, raises a number of sub-issues, which include the following:

(a) Would modification of the level of the post adjustment, as a result of one of the four alternatives proposed in paragraph 7 of the report, violate an acquired right of staff?

(b) What is the existing acquired right of staff in this matter; is it to the actual method of conducting price surveys, to the method as described in the post adjustment system, to the definition of duty station or to a level of remuneration?

(c) At what percentage or quantitative level is an acquired right to remuneration infringed when modifications to calculations are introduced that seriously affect that level?

(d) Given that the post adjustment index currently represents half of staff remuneration in Geneva, has ICSC properly consolidated previous post adjustment fluctuations, so as to not frustrate the acquisition of acquired rights by staff through the recalibration of the index?

11. These issues are discussed further in paragraphs 34 to 37 below.

12. The issue raised by the consultant under paragraph 1 (b) of the report concerning staff prohibited from living in France avoids a more important issue by invoking a straw man. Throughout the report, an inordinate amount of attention is devoted to this alleged problem of staff barred from living in France. In reality, under the present legal regime in effect in France, only Swiss nationals working in Geneva are legally prohibited from establishing residence there.

13. The more fundamental issue involves those staff members who are legally constrained from residing in France, if not prohibited de jure. With the exception of French nationals, staff members who reside in France are presently

"tolerated" by the Government of France and do not have formal legal protections or rights as they would enjoy in Switzerland under the relevant headquarters agreements. While the problems caused by this distinction are more thoroughly discussed below, the real issue that must be addressed is whether a post adjustment that reflects French prices can be equitably applied to staff members who are legally restricted or constrained in their ability to reside in France (more details on the difficulties of residing in France are provided in a 1989 paper prepared by the United Nations Office at Geneva).

14. The fundamental distinction, which the consultant ignores throughout his report, is that legal residence requirements imposed by the United States and the privileges and immunities that it grants to United Nations staff at New York apply equally, irrespective of the State in which a staff member chooses to live; while at the Geneva duty station, the choice is between two separate countries, one of which, France, provides no comparable legal protection to non-citizen staff members residing there.

15. The issue referred to in paragraph 1 (c) of the report, that France is not a party to the Convention on the Privileges and Immunities of the Specialized Agencies and has not concluded headquarters agreements with Geneva-based agencies, properly belongs as a sub-issue to the issue raised above, concerning staff who are constrained from living in France. The failure of France to ratify the Convention or to enter into agreements with the specialized agencies in Geneva directly affects the ability of staff members to reside there, and increases the risks they assume if they chose to locate in France. Moreover, this issue should be broadened to consider all impediments that restrict the freedom of choice of Geneva staff members to reside in France.

16. Another important legal sub-issue related to the above is whether the agencies can redefine the duty station to include areas where staff members have no solid legal basis or guarantee to reside.

17. Finally, following a more logical construction, the last issue should be that listed by the consultant in paragraph 1 (a) (i), namely the legal or administrative steps that would be required by each agency to adopt a new price survey methodology. In part, the response to this question would depend on the alternative selected or recommended.

18. For ITU, there is no formal existing definition of the duty station of Geneva. Although the Constitution and Convention of ITU refer to Geneva as the headquarters of the Union, the operative distinction in its staff regulations and rules is between the headquarters duty station and other duty stations.[d] The staff regulations and rules do not define the geographical scope of the headquarters duty station. Staff rule 3.5 (b) refers to the fixation of the post adjustment index by ICSC for "each duty station", without defining those terms. At this juncture, it is not possible to state definitively what action would be required at ITU if the price survey methodology were to be modified. But it is likely that such action would require, at a minimum, formal approval by the Council of the Union (No. 67 of the Convention).

19. In sum, a formal determination of the legality and feasibility of each of the alternatives described by the consultant in paragraph 7 and of the need for any changes to the present methodology, would require a thorough analysis and a response to all of the above issues. Until then, no definitive legal opinion can be given on this matter, and it would be premature to endorse or adopt any of the proposed alternatives.

B. Factual background

1. Paragraph 2

20. New York is currently the base city, but that has been the case only since 1974, when it replaced Geneva in that capacity. In the interim, there have been major currency and price fluctuations, with the result that the post adjustment index currently constitutes more than half of staff remuneration. Given those circumstances, the question surely can be raised whether the designation of the base city and other fundamental elements of the system should be revised, instead of resorting to a piecemeal solution to remedy a perceived inequity concerning salaries in Geneva.

21. It has also been pointed out that this proposal deals only with the salaries of Professional staff and does not address the situation of General Service staff. A more thorough review of the system could deal with this issue as well.

2. Paragraphs 4 and 5

22. Paragraphs 4 and 5 minimize the special nature of Geneva. Of course, staff members assigned to the other headquarters duty stations do not routinely live in other countries, since, with the exception of Vienna, this is geographically impossible. The real issue raised by these paragraphs is the following. With respect to the other duty stations mentioned, what is the legal or statutory basis under which price surveys have been conducted in areas in which staff generally live? Is it based on the definition of duty station or on the methodology described in the post adjustment system? In addition, how can one glean from the names of the other duty stations the geographic scope of the price surveys? In Paris, for example, are prices surveyed outside the city, i.e., in greater Paris or in the city of Paris only? The assertion that inclusion of the outlying areas in surveys for those cities does not affect the results does not resolve the legal issue. It would also be helpful to have more information as to exactly how surveys are conducted in the other headquarters duty stations.

23. The discussion in paragraph 5 of the report is a tacit admission that the whole structure of the analysis is flawed. The consultant argues throughout that the reason for the geographically limited price surveys in Geneva is a result of the definition of a duty station. But in this paragraph, he states that price surveys are conducted in the city of Geneva only and not elsewhere in the Canton of Geneva or in the adjacent Canton of Vaud. Since the duty station is referred to as Geneva, how was the decision taken, and on what basis, to conduct surveys only in the city of Geneva? Indeed, this statement by the consultant seems dubious, and it needs to be verified as to how price surveys are conducted in Geneva (see note C).

24. Paragraph 5, in particular, asserts a fact that is incorrect and that greatly distorts the analysis. Approximately 20 per cent of ITU Professional staff (55-60) presently reside in France, not 40 per cent as asserted in the report. Of the 20 per cent, one third are French nationals. The relatively low percentage of staff living in France, despite the supposed lower prices there, strongly suggests that the legal impediments to residing in France are real and have a significant impact on the housing decisions made by staff members. Accordingly, that lack of freedom of choice must be reflected in any methodology used to calculate the post adjustment index for Geneva.

25. There may be another flaw in the way the price surveys are conducted. The report refers to price surveys in locations where people live. But surely this is not the same as where people shop. In New York, it is common practice to purchase non-food items at special discount centres that may be quite far from where one lives. The situation in Geneva is unlike New York. There are few discounts available regardless of where one shops in the Geneva-Vaud area. Moreover, staff members residing in Switzerland are confronted with Swiss customs regulations and limits if they shop in France. Astonishingly, the post adjustment system states that prices are not surveyed at budget stores in New York. Thus, the price survey in the base city may not be accurate and may understate the price differentials between New York and Geneva.

3. Paragraph 6

26. The entire "factual" background in paragraphs 2 to 6 rests on a false premise.

27. Instead of examining the special characteristics of the Geneva area, to determine if they are justified and merit a modified survey methodology, the only distinction recognized by the consultant is that for staff members who are legally prohibited from residing in France, a matter that still requires more in-depth research as to the factual scope of such a prohibition.

28. However, there are a number of other barriers that can and, given the numbers cited above, do constitute a barrier to installation in France. While the effect of those factors will differ depending upon the nationality of the staff member, notably whether or not they are citizens of States members of the European Community, they are real and constitute an effective impediment. These factors include the following (and the list is not exhaustive):

(a) No formal legal agreement granting a right to reside in France and thus no guarantee of staying there;

(b) Possibility and threat of changes to status (e.g., the recent tax situation);

(c) Difficult administrative barriers in obtaining necessary residence permits;

(d) Necessity to pass border controls on a daily basis; a problem which has increased since entry into effect of the Schengen Agreement.

29. Taken as a whole, these factors create a "constructive" barrier to installation in France for many staff members and prevent them from benefiting from any cost advantages to be obtained there. In addition, those who do elect to reside in France take a considerable risk in so doing and their situation could be altered at any moment.

30. As a result, the situation in Geneva cannot be considered as comparable to New York or other headquarters duty stations, and adoption of the same price methodology would not produce an equitable result. In all other duty stations, staff have unchecked freedom of choice to reside in any locale surrounding the duty station under the same legal rights and conditions. In Geneva, there is no such complete freedom of choice.

C. Alternative solutions

Paragraph 7

31. The consultant presents four alternatives for adoption, two of which were considered by ICSC and ACPAQ (para. 7 (a) and (b)) and two of which are apparently his own invention (para. 7 (c) and (d)). However, it could well be asked as to whether other, more appropriate solutions could be found, that are consistent with the request of the General Assembly and, more importantly, with the general principles concerning employment and remuneration in the United Nations system.

32. Paragraph 7 of the report describes the four alternatives, while paragraphs 8 to 17 contain a legal analysis of the "solutions". Each of the solutions is discussed below under section E.

D. Legal analysis of the objections considered by the Commission

1. Need to harmonize the definitions of the duty station

Paragraph 8

33. The report asks whether it would be necessary to amend the applicable staff regulations to implement one of the proposed alternatives. It is a fair question with respect to implementation of a new alternative. But, in raising this question, the consultant clearly reveals that he has failed to consider the legal basis for the existing system and the validity of that basis in its present implementation. For example, if it were ultimately deemed not necessary to modify the staff rules to implement one of the proposed alternatives, then an argument could be made that the present system is impermissibly vague (if it allows broad variances in the method of price calculation methodology), and could be challenged on that basis.

2. Acquired rights

Paragraph 9

34. As discussed in paragraph 3 above, the analysis in paragraph 1 of the report is at best incomplete and arguably misleading. While staff may not have acquired rights to a particular survey methodology, staff may indeed have such rights with respect to the outcome of that survey, if a new methodology causes significant changes to their previous level of remuneration.

35. For the Commission's 1994 deliberations, the secretariat had already estimated that the proposed change to the survey methodology could result in a reduction of the post adjustment index of 5 to 10 per cent. This is clearly an important reduction in remuneration levels. Although the report cites jurisprudence on acquired rights, it is silent as to whether those cases involve changes of the magnitude that could occur as the result of some of the proposed alternatives (especially para. 7 (a)).* There can be little doubt that any action that would result in a reduction of the post adjustment index by 5 to 10 per cent, for all or some of the staff, would be vigorously contested by the latter, and thus the jurisprudence must be thoroughly examined before any action is taken.

36. Indeed, it is a more than plausible argument that staff do have an acquired right to a certain level of remuneration, regardless of how calculated, and have relied on that level of remuneration in accepting employment with an agency. This is all the more likely when the post adjustment index represents half of their total remuneration. Surely, it cannot be argued that agencies have carte blanche to modify the calculation of allowances or benefits, irrespective of the amount of the change.

37. It is, therefore, critical that a more thorough legal analysis be conducted on the basis of the broader sense of acquired rights described above and the effect of any of the proposed alternatives on such rights. In the absence of such an analysis, any final action is precipitate and the result before a Tribunal cannot be assured.

Paragraph 10

38. As ITU does not agree with the narrow nature of the legal analysis set forth by the consultant in paragraph 9, the first line in paragraph 10 referring to applying "these standards" again is a device that compels the right answer to the wrong question.

Subparagraph 10 (a)

39. As framed, the supposition that staff did not base their employment decision on the price survey methodology may be true, but the point is obviously incomplete.

40. It can hardly be denied that a prospective staff member considers the amount of post adjustment as highly important in a decision whether or not to accept employment with a Geneva agency, since that amount constitutes half of the remuneration. Indeed, reflecting this importance, staff vacancy notices routinely list the amounts both of salary and post adjustment, but not the amounts of other entitlements. The staff member may be less interested in the method by which the post adjustment is derived, but he or she is entitled to rely, reasonably, on the fact that a significant change will not be made to their overall level of emoluments.

Subparagraph 10 (b)

41. Subparagraph 10 (b) is largely irrelevant. As discussed in the subparagraph, the concept of duty station refers to staff expectations as to the location or site where they will or can be assigned to work, not where they will live. For purposes of this analysis, it is not pertinent to determine whether staff have an acquired right in a designated duty station as a place of work. The point being raised here, that an agency could move to Ferney and its staff could not argue that an acquired right was being attacked, has nothing to do with calculation of the post adjustment index. The situations are simply not analogous.

Subparagraph 10 (c)

42. It may be true, based on the jurisprudence, that staff do not have an acquired right to an error in their favour committed by an agency administration. But the consultant has not established that there is an error in the calculation of the Geneva post adjustment index, nor that the present system is "an anomaly or defective".

43. First, a situation is anomalous only if it reflects a difference that is not justified. However, for the reasons enumerated above, although the price survey methodology used in Geneva may be different from that used in New York, this difference is amply merited by the special characteristics of Geneva and the presence of a national border limiting access to adjoining areas. Thus, in the view of ITU, the methodology used in Geneva is not anomalous.

44. Equally, the assertion that the Geneva post adjustment index is "objectively defective" is merely an assertion that is not supported or proven in the report. Again, while the methodology used in Geneva is different, it remains to be proven that the result it produces is wrong or "defective". Indeed, that is not the case if that difference properly reflects unequal circumstances. The only objective statement that can be made is that Geneva has used a different survey methodology in calculating its post adjustment index.

3. Right to equal treatment

Paragraph 11

45. The key premise, as the consultant recognizes, underlying the adoption of a single post adjustment index for an area, such as metropolitan New York, in which prices and costs can vary widely, is that staff can freely choose where to reside within that area. However, without freedom of choice, the principle of equal treatment is violated.

46. It is, therefore, this very lack of free choice in the Geneva area that compels a different methodological approach. The use of a survey methodology that encompasses areas in which many Geneva staff members do not have an unfettered freedom to choose to reside would violate the principle of equal treatment.

47. In the last sentence of paragraph 11, the consultant states that the single post adjustment index has "long been considered as satisfying the legal requirement of equal treatment". There is no support or justification provided for this statement. On the other hand, it could be stated that a single post adjustment index for Geneva, under the method by which it is presently calculated, has long been considered satisfactory, owing to the lack of free choice for Geneva-based staff in their place of residence.

Paragraph 12

48. As it becomes clear in paragraph 12, and as it is hinted at elsewhere, one goal of this exercise seems to be simply to lower the post adjustment index in Geneva. As a factual matter, it cannot be denied that the post adjustment index in Geneva is higher than elsewhere and that the level of remuneration is "relatively higher". However, this is not a violation of the principle of equal treatment, if that difference is, correspondingly, justified by the special circumstances of the Geneva duty station.

49. Further, the terminology used in paragraph 12 is unwarranted. The use of the term "relatively higher" suggests that the difference is improper. There is no doubt that a different survey methodology is used in Geneva, and that it produces a somewhat higher post adjustment index by excluding prices in France. Nonetheless, if this difference in survey methodology correctly reflects the existence of a national border, then it is justified and the result is appropriate.

50. The subtle implication in paragraph 12 that the Geneva post adjustment index is simply too high, and would be even if the methodology were revised, is not supported by any evidence. To the contrary, it raises the issue as to whether the current methodology, or as revised, actually produces a fair result. There is no way to answer this question, unless the entire methodology and system is reviewed.

Paragraphs 13 and 14

51. Having raised the issue of staff members prohibited from living in France, the consultant fails to resolve it and simply states that it should be treated as "falling within the area of legislative or administrative discretion". If a separate post adjustment index were to be created for Swiss nationals, i.e., those prohibited from living in France, based only on Geneva prices, this could well lead to an anomalous situation, wherein Swiss staff would receive higher remuneration than their colleagues.

Paragraph 15

52. The analysis in paragraph 15 misses the essential point. The problem isn't the few staff members legally prohibited from living in France, but all those who are legally constrained from living there. The Government of France is well aware of the present situation and, as a result of the recent discussions on taxation, the overall status of international civil servants living in France and working in Geneva has also been raised. The real need is to regularize the situation of all staff members who choose to live in France, which could thereby create a freedom of choice in residence at Geneva more comparable to that which exists in New York and the other headquarters stations. However, the likelihood of any such action is a matter of speculation, and thus the post adjustment index calculation must reflect the situation as it actually exists.

4. Privileges and immunities in France

Paragraph 16

53. ITU strongly and vehemently disagrees with the dismissive treatment of this question in the report, which the consultant considers to be irrelevant.

54. The fact that France is not a party to the Convention on the Privileges and Immunities of the Specialized Agencies nor to any headquarters agreements with Geneva-based agencies is a leading reason for the uncertain status of staff who reside there and creates a strong disincentive for any staff member contemplating installation across the border. It also clearly indicates the difference in legal protections for staff who live in Switzerland, as compared to France, and highlights the real risks taken by staff members who elect to reside in France.

55. In addition, this legal situation poses a dilemma for the agencies. ITU has already indicated above that it would be juridically difficult for the Geneva-based agencies to define the scope of the duty station to include areas where staff members would not receive privileges and immunities and do not have a legal right to reside by virtue of their employment. Moreover, the lack of a defined legal status for staff members residing in France makes it difficult for the agencies to counsel staff as to whether they should locate there. As ILO has noted, at certain intervals, it has advised staff members not to locate in

France, precisely owing to the uncertainties created by the lack of a formal legal structure between France and the Geneva-based agencies.

Paragraph 17

56. While there may be different sales taxes and property rates in the New York area, this is simply not comparable to the different legal status of staff members in Switzerland and France. In addition, the United States has enacted special legislation concerning the privileges and immunities of international organizations, even though it is not a party to the Convention on the Privileges and Immunities of the Specialized Agencies, and these conditions apply irrespective of where United Nations staff members reside.

E. Legal analysis of the various solutions

1. Paragraph 19

57. See the discussion on acquired rights in paragraphs 3 and 34 to 44 above.

2. Paragraph 20

58. The alternative in paragraph 7 (a) would lower the post adjustment index by 10 to 15 per cent, with a consequent effect on staff remuneration. It would apply to all staff members equally and is the alternative most consistent with the request of the General Assembly and the survey methodology used in New York. It has the merit, therefore, of respecting a certain equality of treatment among Geneva-based staff.

59. This alternative does not, however, reflect the special characteristics of Geneva and is not equitable as between New York and Geneva. Including in the price survey an area that is not readily accessible to most staff members would produce a post adjustment index that is not reflective of the actual situation. If the survey methodology is to be "representative", it must reflect the special situation in Geneva.

3. Paragraph 21

60. The alternative in paragraph 7 (b) would better reflect the lack of choice in Geneva by maintaining a separate post adjustment index for staff members residing in Switzerland and France. It would, however, create a disparity in remuneration depending upon the country in which a staff member resides. The legal repercussions of this difference are difficult to assess. It is not clear what is meant in the statement that this alternative would "disadvantage those residing in France" and it would be important to have some estimate of the difference between the two post adjustment indices that would result.

61. It is somewhat ironic that, finally, in this paragraph the consultant recognizes the existence and importance of a national border separating the areas where Geneva-based staff live, although he has not given any weight to this fact in all of the preceding analysis.

62. The two post adjustment indices in this alternative need to be better explained, with specification as to exactly how the two indices would be calculated, i.e., on what geographic scope would the price surveys be conducted. This is not clear in the report.

4. Paragraph 22

63. The alternative in paragraph 7 (c) is not a viable solution, since it misstates the special situation in Geneva. For reasons already discussed, this alternative gives undue importance to a minor problem that is not deserving of special treatment.

5. Paragraph 23

64. The alternative in paragraph 7 (d) is a radical departure from the existing system and is probably objectionable on that basis. As a whole, it seems overly complicated and would be difficult to administer. However, it would reflect the special nature of Geneva and would be less objectionable with respect to the acquired rights problem.

65. The method of calculation is not clear nor has an explanation been provided as to how and when the ratios mentioned in paragraph 23 are to be calculated. It would seem that the proper ratio for comparison is between Manhattan and metropolitan New York, not Manhattan versus New York City. It also seems odd to calculate the post adjustment index for Geneva only, but to include for purposes of evaluation an estimate of the ratio between prices between Geneva and all areas where Geneva-based staff reside.

66. By referring to the notion of "rough justice", the consultant introduces a new concept into the discussion. Consideration of the post adjustment index and the price survey methodology can be viewed through the prism of means-oriented or results-oriented analysis. On the one hand, it can be argued that so long as the same methodology is followed in Geneva as in New York, then General Assembly resolution 48/224 has been implemented. On the other hand, consideration needs to be given as to whether the results of applying the same methodology are fair and preserve equality of treatment or, as the consultant terms it, "rough justice". The answer to this question would require more fundamental analysis and review of the system.

6. Subparagraph 24 (a)

67. This is a very strong statement, since the consultant reads the General Assembly resolution as a condemnation of the present survey system as applied in Geneva. While the resolution is very narrowly framed, and literal application would compel conducting price surveys for Geneva in all areas where staff live, ITU considers that the resolution must be construed in the context of the entire post adjustment index system. As noted above, mechanistic application of the same survey methodology in Geneva as that being used in New York is objectionable and risks legal challenge, if it violates other principles such as the acquired rights of staff and equality of treatment at the Geneva duty station, and if it fails to reflect real differences in the legal situation of the areas being compared due to the existence of a national border between Geneva and France.

7. Subparagraph 24 (b)

68. See the discussion in paragraphs 38 to 44 above. It is not clear how the post adjustment index in Geneva disadvantages Professional staff at other duty stations.

Notes

[a] Official Records of the General Assembly, Fiftieth Session, Supplement No. 30 (A/50/30), annex XIV.

[b] The foreword of the publication contains disclaimers that the publication itself does not form part of the staff regulations and rules. However, it cannot be dismissed as a basis for staff reliance.

[c] But apparently, this reference to "this city of Geneva" alone is not correct, as such surveys have in the past included other parts of the Canton of Geneva, such as Meyrin, Versoix, etc.

[d] See No. 175 of the Constitution and No. 67 of the Convention, which refer to the post adjustment as being "for application at the seat of the Union".

[e] For a different view, see ILO Administrative Tribunal, No. 986, para. 3, in which the Tribunal restates its view that even when there has been amendment of staff regulations there will be breach of an acquired right that warrants setting the decision aside if the altered term of appointment is fundamental and essential.

Annex X

COMMENTS BY THE OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

1. Reference is made to the letter dated 20 June 1997 from the Chairman of the Advisory Committee on Post Adjustment Questions (ACPAQ) addressed to the Legal Counsel of the United Nations, in which it is stated that the Office of the United Nations High Commissioner for Refugees (UNHCR) had no comments of a legal nature to make on the subject of the establishment of a single post adjustment for the greater Geneva area. On a point of clarification, it would be more correct to say that UNHCR had no additional comments of a legal nature over and above those already made by other Geneva-based organizations.

2. Indeed, UNHCR shares a number of legal concerns with the Geneva-based organizations on the question of introducing methodological changes to the calculation of a Geneva post adjustment that might potentially - and uniquely in the United Nations common system - be based on place of residence rather than on assignment to a particular duty station, particularly since the choice of residence - and indeed of spending patterns - is not freely available to all staff.

3. UNHCR has legal concerns with all of the alternative approaches identified so far, with the sole exception of maintaining the status quo. We would not, however, see any significant problem in basing a single post adjustment on price and rent data collected from both the Canton of Geneva (as is presently the case) and in the neighbouring Canton of Vaud where a number of international staff live, as all staff assigned to the duty station of Geneva have the right to take up residence there.

4. Much of the discussion of the legality of establishing a revised single post adjustment for Geneva has hinged on the concept of duty station. Although there may be some ambiguity on the precise definition of this term, it would appear that being assigned to a duty station involves the right of abode and to perform official functions in that location. In the case of staff assigned to Geneva, neither applies to neighbouring France.

5. The rights and status of staff who reside in France are not governed by any agreements but merely by an "understanding", the scope and content of which are liable to unilateral change by the Government of France or the local authorities at any time and for whatever reason. UNHCR staff based in Geneva are assigned to Geneva, not anywhere else - including neighbouring France.

6. Another attribute of the concept of duty station is that of a duty station being the geographical location in respect of which staff receive emoluments, benefits and entitlements - and not necessarily where they spend their time either professionally or privately. Staff on mission service are a case in point. Staff who spend the night in France are another.

7. The post adjustment system is designed to attempt to ensure equal purchasing power for all staff, irrespective of the location to which they are assigned to perform official duties for the organization. Any methodological change to the post adjustment system that does not reflect the equal opportunity of all staff to reside and purchase on an equal footing is, in the opinion of UNHCR, both methodologically flawed, and open to legal dispute.

8. Should any organization of the United Nations common system be unable, because of internal constraints, such as host government agreements, governing bodies or internal regulations, to implement any amendments to the current post adjustment methodology for Geneva, this would result in the establishment of a dual post adjustment application for the Geneva duty station - or in other words the end of the United Nations common system - which would neither be in the interest of organizations nor member States, and which would certainly be a prime candidate for legal challenge.

9. I must apologize for this somewhat lengthy and belated contribution to the discussion, but I am concerned about dispelling any possible perceptions that UNHCR has no legal (or indeed methodological, administrative or practical) problems with the proposed alternatives for introducing a single post adjustment for Geneva based on price and rent data from a country where staff may reside based on administrative, rather than a legal, agreement.

Annex XI

COMMENTS BY THE WORLD HEALTH ORGANIZATION

A. Introduction

1. The purpose of the present commentary is to present the views of the Office of the Legal Counsel of the World Health Organization (WHO) concerning the legality of the establishment of:

(a) A single post adjustment index for Geneva that takes into account prices in the border areas of France;

(b) A dual post adjustment index, one based on Geneva prices and the other based on prices in the border areas of France.

2. For the reasons set forth in this commentary, it is concluded that there are significant, possibly insurmountable, legal problems associated with implementing either of the proposed revisions to the Geneva post adjustment index.

B. Background

3. The General Assembly, in section II.G of its resolution 48/224, requested the International Civil Service Commission (ICSC) to ensure that place-to-place surveys conducted for all headquarters duty stations were fully representative of the cost of living of all staff working in the duty station.

4. Following its consideration of the report of ICSC,[a] the General Assembly, in section I.B, paragraph 2, of its resolution 50/208, requested ICSC to establish in 1996 for staff members whose duty station is Geneva, a single post adjustment which was fully representative of the cost of living of all staff working in the duty station and which ensured equality of treatment with staff in other headquarters duty stations.

5. ICSC reported to the General Assembly that a combination of technical, policy, administrative and legal ramifications of the issue mitigated against the establishment in 1996 of a single post adjustment index for Geneva.

6. The General Assembly, in section I.E, paragraph 3 of its resolution 51/216, reiterated its request to ICSC urgently to complete its study regarding the methodology for establishing a single post adjustment index for Geneva, and to complete the study needed to implement the single post adjustment index no later than 1 January 1998.

C. Legality of single post adjustment index for Geneva, taking into account prices in the border area of France (the "unified post adjustment index option")

7. To state the conclusion at the outset, and referring back to the words of the General Assembly in its resolution 50/208 cited above, there is evidence to suggest that the unified post adjustment index option would not be fully representative of the cost of living of all staff working in the duty station. As explained further below, all staff working in Geneva do not have the right to

live in France, or to enter France without restriction. Neither do they have an unrestricted right to import goods bought in France into Switzerland.

8. Referring again to the language of the General Assembly resolution, evidence suggests that a unified post adjustment index would not ensure equality of treatment with staff in other headquarters duty stations. On the contrary, Geneva would stand alone as the sole headquarters duty station in the common system where a large percentage of staff would not have access to all goods and services relied upon to calculate the post adjustment index because of a legal impediment in the form of a national border.

9. A unified post adjustment index would thus arguably not satisfy the instructions of the General Assembly. Quite the opposite. As elaborated further below, a unified index would be based on fundamental errors of fact. It could also violate what the Administrative Tribunal of the ILO has ruled is the purpose of a post adjustment index - to achieve parity of purchasing power between duty stations.

10. Before expanding on these points, it is useful to make a preliminary comment concerning the staff rules of WHO on the post adjustment index and what is meant by the "official station".

1. Staff rules

11. Under the WHO staff rules, the post adjustment index is determined with reference to the "official station".

12. The WHO rules do not define "official station". Nevertheless, at its first meeting, in 1948, the World Health Assembly determined that Geneva was the headquarters of WHO.

13. In the absence of a formal definition of "official station", and in the absence of jurisprudence by the ILO Administrative Tribunal on this point, it is reasonable to assume that the official station for headquarters based staff is the location of the headquarters - that is, Geneva, Switzerland. Indeed, the reference to Geneva, Switzerland, as the official station of all headquarters posts is routinely included on all vacancy notices.

14. Thus, as a preliminary point, any decision to include prices outside the official station in the determination of the post adjustment index for Geneva would require a decision of the World Health Assembly to expand the concept of "official station".

15. Returning to a central legal concern - a convincing argument could be made that a decision to implement a unified post adjustment index would be based on fundamental errors of fact related to the residence of staff and to their unrestricted right to import goods into Switzerland.

2. Residence - legal prohibition

16. First is the question of residence. Many WHO staff are prohibited from living in France. In principle, staff of Swiss nationality cannot live in France. As well, non-Swiss staff who are married to Swiss nationals working in Switzerland are usually prohibited from living in France.

17. Even staff who are French or European Union nationals are precluded from living in France if their spouse works in the private sector in Switzerland. In principle, all non-Swiss nationals who work in the private sector in Switzerland must live in that country.

18. The prohibition against living in France arises not only as a result of one's nationality or that of one's spouse. An entire category of staff - that is, short-term staff (staff holding an appointment of less than one year's duration) - cannot live in France unless they are nationals of the European Union, or are married to a national of the European Union.

19. WHO employs significant numbers of short-term Professional staff and short-term consultants, and the number is growing. In 1993, WHO recruited 264 such staff. In 1994, the number rose dramatically - to 490. The increase continued in 1995, to 530, and in 1996, to 534 such staff. In the first six months of 1997, 439 short-term Professional staff and short-term consultants were recruited.

3. Residence - constructive barrier

20. Still other staff, again largely because of their nationality, face such significant problems in entering France that their residency in that country is, for all practical purposes, not possible. Legal constraints and constructive barriers to residency make it not feasible for them to live anywhere but in Switzerland.

21. For example, nationals of 146 countries require visas to enter France. Visas are normally issued for from three or six months, or for a much shorter duration, depending on the applicant's nationality and other considerations. There is a waiting period of between three days and several weeks.

22. And staff of certain nationalities face restrictions on leaving the country. Nationals of 13 countries are required to present an exit permit to leave France and return to Switzerland.

23. All of this is in sharp contrast to the situation in the comparator city, New York, where there is no international border to cross, no restriction on the movement of people and goods, no visa requirement to travel to New Jersey or Connecticut.

4. Precarious status of other staff living in France

24. While there are many staff who are prohibited from living in France, or whose residency in that country is simply not feasible, other staff do not face either problem.

25. In fact, one third of the WHO Professional staff lives in France. It should nevertheless be noted that, except for French nationals, staff do not have a legal right to do so. Their presence is merely tolerated by the French authorities on a purely discretionary basis. Their status in France, including income tax exemption, could change with little notice. They could be forced to leave at any time.

26. Moreover, staff who live in France do not have the benefit in France of the usual privileges and immunities. They have none of the legal protections or rights that they would enjoy under the relevant host agreement with Switzerland.

27. These privileges and immunities and legal protections cannot be considered to be administrative niceties, having little practical relevance. While it is true that some staff are prepared to forego these protections, their willingness to do so does not prove that the protections are without value. On the contrary, the common system has long considered them fundamental to the protection of international civil servants. And, as noted by ITU, it would be juridically difficult for Geneva-based agencies to define the scope of the duty station to include areas where staff members would not receive privileges and immunities and do not have a legal right to reside by virtue of their employment.

28. Once again, the privileges and immunities issue in Geneva contrasts with the situation in New York. We understand that the legal residency requirements imposed by the United States, and the privileges and immunities that it grants to United Nations staff in New York, apply equally, irrespective of the State in which a staff member chooses to live. In Geneva, on the other hand, the choice is between two separate countries, one of which, France, provides no comparable legal protection to non-citizen staff members.

5. Importation of goods from France into Switzerland

29. Leaving aside for the moment the question of residency, and turning to the question of the importation of goods, it should not be assumed that staff who live in Switzerland can easily cross the border to shop in France. The same constructive barriers to living in France (including visas and exit permits) affect the unrestricted entry of staff of some nationalities into France.

30. But even for the majority of staff who live in Switzerland and who normally face no serious difficulties in crossing the border, there remains the problem of importing goods back into Switzerland. Switzerland imposes strict limitations on the quantity of food and value of goods that may be imported tax free. For example, there is free import of food provisions only "up to the quantities a person normally requires for one day". There is a 50 Swiss franc (around US$ 30) limit on the importation of goods for one's own use. It is thus impractical for staff to live in Switzerland and legally make anything but occasional purchases in France of small quantities of food or items of little value.

31. And staff members who live in Switzerland have no access whatsoever to important services available to those who live in France. For example, their water distribution, electricity, telecommunications and automobile insurance must be purchased in Switzerland.

6. Tribunal jurisprudence

32. As shown, all staff do not have an unrestricted right to live in France and work for WHO. Some are prohibited from living across the border by virtue of their nationality, or the nationality of their spouse. Others are restricted by virtue of the nature of their appointment with the organization. Still others, again largely owing to their nationality, face such significant problems in entering France that their residency in that country is, for all practical

purposes, not feasible. And for the majority of staff who live in Switzerland and want to shop in France, there are strict limitations on the importation of goods.

33. It thus appears that the ILO Administrative Tribunal could view as fundamentally unsound a unified post adjustment index that assumes all staff may live in France, or live in Switzerland and import goods without restriction. A post adjustment index that is based on factual misconceptions is unlikely to withstand Tribunal scrutiny.

34. The Administrative Tribunal allows international organizations significant latitude in making and implementing discretionary decisions, such as those related to the revision of a post adjustment index. But the organizations' authority is not left unchecked. A long line of precedents establishes that the Tribunal will review discretionary decisions that are based on errors of fact. The Tribunal could conclude that the factual misconceptions summarized above are errors of fact that go to the very heart of the proposed unified post adjustment index.

35. The ILO Administrative Tribunal has also commented repeatedly on the purpose of the post adjustment index, and the need for the index to be implemented to achieve that purpose. Failure to do so has led the Tribunal to rule that a post adjustment index was discriminatory, and thus invalid. In judgement No. 1420, the Tribunal stated:

> "The purpose of [a post] adjustment ... is to maintain or restore parity in purchasing power between staff whatever their duty station may be. By refusing to ensure parity of pay by that means the Council in fact discriminated against staff ...".

36. If a unified post adjustment index were to be challenged before the ILO Administrative Tribunal, a complainant might ask:

(a) How can parity of purchasing power be "ensured", to quote the Tribunal, when those staff who live in France do so at the discretion of the French authorities?

(b) How can there be parity of purchasing power when not all staff in Geneva have the same "power"?

(c) How can there be parity of purchasing power with a post adjustment index that assumes, wrongly, the unrestricted importation of goods into Switzerland?

(d) How can there be parity of purchasing power when the paycheck a United Nations staff member spends in New York cannot buy the same goods in Geneva, because the Geneva post adjustment index takes into account French prices that are not available to all staff?

37. In answering these questions, the Administrative Tribunal could conclude that a revised post adjustment index would not ensure parity of purchasing power. If WHO fails to ensure such parity it risks being held accountable by the Administrative Tribunal for discriminating against its staff.

7. Conclusion - unified post adjustment index

38. In conclusion on this point, the notion that WHO could define the scope of the official station to include areas where staff have no legal right to reside, and where staff would not be protected by any privileges and immunities raises significant legal concerns.

39. Any post adjustment system that takes into account the circumstances of staff prepared to live in a country other than the host country, in a country where staff have no comparable legal protections or even unfettered right to reside, may be considered by the Administrative Tribunal to be fundamentally unsound. It thus risks being subject to a successful judicial challenge.

D. Legality of a dual post adjustment: one for staff living in France, and one for staff living in Switzerland

40. At first glance the dual post adjustment index proposal may seem to address the concerns expressed so far in this commentary. For example, arguments relating to importation of goods and restrictions on residence would be of marginal relevance. But while the legal concerns raised by a dual post adjustment index are perhaps less obvious, they are by no means insignificant.

41. Leaving aside concerns related to the administrative feasibility of this proposal, a dual post adjustment index would be subject to legal challenge on several fronts. Arguably, a dual post adjustment index would:

(a) Offend the principle of equality of treatment between staff in Geneva and staff in other duty stations;

(b) Offend the principle of equality of treatment of staff at the duty station;

(c) Take into account irrelevant considerations; and violate the acquired rights of staff.

Each will be considered in turn.

1. Equality of treatment between duty stations

42. A dual post adjustment index would arguably violate the equality of treatment between staff in Geneva and staff in other headquarters duty stations. It was, after all, this equality of treatment that the General Assembly, in its resolution 50/208, asked to be protected.

43. A dual post adjustment index would be an attempt, it is supposed, to take into account any differences in the cost of living for staff who live in France. But nowhere in the common system is a second distinct post adjustment imposed at the same duty station to make allowance for the personal choices and financial circumstances of some staff.

44. In principle, the methodology for formulating a single post adjustment takes into account such variables. It takes into account, for example, that a staff member who works in New York City could choose to live far from the downtown core to economize. This choice would not make the staff member subject to a different post adjustment. Rather, it is understood that staff who are

willing to accept the inconvenience of a long-distance commute to work, or to live in a less desirable part of the city, may fare better financially than others. These variables are taken into account in arriving at a single post adjustment that, on average, reflects of the cost of living of Professional staff in the duty station.

45. It has been argued that the Geneva post adjustment index does not reflect with total accuracy the average cost of living of staff, since it does not take into account prices in the border areas of France. However such an argument does not take into account that staff based in Geneva do not have an unfettered right to live and shop in France because of the existence of a legal impediment in the form of an international border.

2. Equality of treatment at the duty station

46. A dual post adjustment index would arguably offend the principle of equality of treatment of staff in Geneva. ILO, the expert in such matters, has noted that a fundamental principle of labour law requires that two staff members, working for the same employer, in the same office, doing the same work, should receive the same salary. Any disparity of remuneration arising from where one of the staff members chooses to live could thus be subject to judicial challenge.

3. Taking into account irrelevant considerations

47. The ILO Administrative Tribunal has also faulted organizations for taking into account irrelevant considerations in the calculation of the post adjustment index. For example, in judgement No. 1460, the Tribunal ruled that the system of post adjustment was of no relevance to differences in working hours, being concerned solely with parity of purchasing power, and was not an appropriate means of securing compensation for differences in working hours between duty stations.

48. By analogy, one could argue that the post adjustment index is not an appropriate means of securing compensation for differences related to peculiarities in the geographic location of duty stations. A case could be made that Geneva's location near the border of France should not be the impetus for revising the post adjustment index (especially in the case of a unified post adjustment index, when such a revision entails a reliance on fundamental errors of fact).

4. Violation of acquired rights

49. Finally, it is arguable that a dual post adjustment index would interfere with the acquired rights of staff.

50. According to ILO Administrative Tribunal precedent, an acquired right is one that is of decisive importance to a candidate for appointment. It must be important enough to affect the mind of the ordinary applicant when he or she is considering joining the organization. It must be a term of the sort that might sway an applicant's decision.

51. In applying this jurisprudence, the consultant's report concludes that staff do not have an acquired right to a particular survey methodology, since

such a methodology would not have been a term that would sway an applicant's decision to accept an appointment.

52. That conclusion appears legally sound. But what the consultant's report does not address is whether staff have an acquired right with respect to the outcome of the survey if a new methodology causes significant changes to their previous level of remuneration.

53. This point was made forcefully by ITU. Its comments on this subject continue as follows:

> "For the Commission's 1994 deliberations, the Secretariat had already estimated that the proposed change to the survey methodology could result in a reduction of the post adjustment index of 5-10 per cent (see ICSC/40/R.6, para. 7). This is clearly an important reduction in remuneration levels ...
>
> "Indeed, it is a more than plausible argument that staff do have an acquired right to a certain level of remuneration, regardless of how calculated, and have relied on that level of remuneration in accepting employment with an agency. This is all the more likely when the post adjustment index represents half of their total remuneration. Surely, it cannot be argued that agencies have carte blanche to modify the calculation of allowances or benefits, irrespective of the amount of the change."

54. This conclusion is supported by ILO Administrative Tribunal jurisprudence. In judgement No. 832 (in re Ayoub et al.) the Tribunal considered, inter alia, whether changes to the scale of pensionable remuneration amounted to an interference with the acquired rights of staff. In making its ruling, the Tribunal commented that it must in each case determine whether the altered term was fundamental and essential.

55. In making this determination, the Administrative Tribunal applied three tests. The third test was the consequence of allowing or disallowing an acquired right. It asked what effect would the change have on staff pay and benefits and how did those who plead an acquired right fare as against the others?

56. Thus the ILO Administrative Tribunal does not limit its consideration on the acquired rights issue to the nature of the right being changed. It takes into account the practical consequences of the change to the staff member. By implication, the more fundamental the term, and the greater the hardship to staff in changing it, the more likely a right is to be considered an acquired right.

57. This conclusion is also supported by the Administrative Tribunal's comments in judgement No. 391 (in re de Los Cobos and Wenger). Here the Tribunal considered the legality of the ILO decision to deduct over a period of six months an amount equivalent to 2.2 per cent of the net salary, as increased or reduced by post adjustment, of officials in the Professional and higher categories. This amount was the net salary corresponding to four days of compulsory leave. The amount was to go unpaid owing to the financial crisis faced by the organization following the withdrawal of a State from membership. The withdrawal, in turn, could have resulted in some staff having to be dismissed, unless salaries were reduced.

58. In upholding the legality of this salary deduction, the Administrative Tribunal placed special emphasis on the following considerations:

> "The reduction in salary was both slight and short-lived ... Moreover, the decision was taken from a desire to keep on officials who, but for the deductions from salaries, would have been dismissed ... It is ... quite within the realm of possibility that, had the parties, at the time when the contracts of employment were concluded ... envisaged the straitened circumstances in which ILO was ... placed, they would not have treated the agreed salary as inviolate. On the contrary, they would have consented to its slight and temporary reduction."

59. Should the Geneva post adjustment index be revised, either by way of a unified or dual index:

(a) The consequential reduction in take-home pay would not, to quote the Administrative Tribunal, be "slight" - that is, if one accepts the secretariat's estimate of a reduction of the post adjustment index by 5 to 10 per cent. On the contrary, a 5 to 10 per cent reduction in a sum that comprises about half of a staff member's total remuneration would be significant;

(b) Owing to exchange rate variables and any reversal of cost-of-living relativities, it is not possible to predict the duration of any reduction in take-home pay that might result from a revision of the post adjustment index. However, presumably it is the General Assembly's intention that any such revision would have a long-lasting effect. If that were to be the case, any reduction in take-home pay would not be "short-lived" or "temporary", to quote the Administrative Tribunal;

(c) Finally, the Administrative Tribunal considered that the purpose of the temporary reduction in salary was in the interest of ILO as an organization and in the interest of staff at large. It appears, however, that the reason for the proposed revision of the Geneva post adjustment index has never been adequately explained, or its purpose adequately justified - especially in view of the significant legal concerns associated with any such decision.

5. Conclusion - dual post adjustment index

60. In conclusion on this point, a dual post adjustment index would be subject to legal challenge on several fronts. Arguably, a dual index would:

(a) Offend the principle of equality of treatment between staff in Geneva and staff in other duty stations;

(b) Offend the principle of equality of treatment of staff at the duty station;

(c) Take into account irrelevant considerations;

(d) Violate the acquired rights of staff.

E. Obligation of the World Health Organization to ensure the legality of a revision to the post adjustment index

61. The ILO Administrative Tribunal recognizes that membership in the common system imposes on international organizations an obligation to do their utmost in good faith to import into their own internal rules the Commission's guidelines, policies and recommendations.

62. But the obligation on WHO to do its "utmost in good faith" cannot override the legal obligation it owes its staff. Following a long line of precedent, the ILO Administrative Tribunal has ruled that:

> "An organization [that] has ... fully complied with the obligations it derives from its membership of the common system ... may not in that way decline or limit its own responsibility towards the members of its staff or lessen the degree of judicial protection it owes them ...
>
> "[B]y incorporating the standards of the common system in its own rules the organization has assumed responsibility towards its staff for any unlawful elements that those standards may contain or entail. Insofar as such standards are found to be flawed they may not be imposed on the staff and [the organization] must if need be replace them with provisions that comply with the law of the international civil service."

63. In recent cases before the ILO Administrative Tribunal, the Tribunal has invited ICSC to make its own submissions in support of post adjustment decisions. But this avenue for ICSC to argue directly before the Tribunal does not lessen the primary responsibility of WHO to ensure that the legal rights of staff are protected.

F. Summary and conclusions

64. Based on this analysis, it appears that there are significant, perhaps insurmountable, legal problems associated with implementing either a unified post adjustment index, or a dual index - one based on Geneva prices and the other based on prices in the border areas of France.

65. The Administrative Tribunal could rule that any unified post adjustment index for Geneva would be based on fundamental errors of fact related to the residence of staff and to their unrestricted right to import goods into Switzerland. All staff do not have an unrestricted right to live in France and work for WHO. Some are prohibited from living across the border by virtue of their nationality, or the nationality of their spouse. Others are restricted by virtue of the nature of their appointment with the Organization. Still others, again largely owing to their nationality, face such significant problems in entering France that their residency in that country is, for all practical purposes, not feasible. And for the majority of staff who live in Switzerland and want to shop in France, there are strict limitations on the importation of goods. These limitations render impractical anything but occasional purchases in France of small quantities of food or items of little value.

66. Arguably, then, any post adjustment index that assumes all staff may live in France, or live in Switzerland and import goods without restriction, is fundamentally unsound. It would be based on factual misconceptions, and would thus appear unlikely to withstand the scrutiny of the ILO Administrative Tribunal.

67. Moreover, staff could argue that a revised post adjustment index would not ensure parity of purchasing power between duty stations. The ILO Administrative Tribunal has ruled repeatedly that the post adjustment index must be implemented to achieve such parity. If WHO fails to ensure such parity it risks being held accountable by the Tribunal for discriminating against its staff.

68. The notion that WHO could define the scope of the official station to include areas where staff have no legal right to reside, and where staff would not be protected by any privileges and immunities, raises significant legal concerns. Any post adjustment system that takes into account the circumstances of staff prepared to live in a country other than the host country, in a country where staff have no comparable legal protections or even unfettered right to reside, may be found to be fundamentally unsound.

69. By the same token, and leaving aside administrative concerns addressed elsewhere, a dual post adjustment index would be subject to legal challenge on several fronts. It could be argued that a dual index offends the equality of treatment of staff between duty stations and within the duty station of Geneva. It could be argued that a dual index takes into account irrelevant considerations and violates the acquired rights of staff.

70. In conclusion, the proposals to revise the Geneva post adjustment index, either by way of a unified or dual index, raise compelling legal concerns. WHO, and all the Geneva-based common system organizations, have a legal responsibility to ensure that the legal rights of their staff are protected.

71. It is thus hoped that the important legal concerns raised in this commentary and elsewhere will be weighed carefully and taken into account in considering the implementation of General Assembly resolution 50/208.

Notes

[a] Official Records of the General Assembly, Fiftieth Session, Supplement No. 30 (A/50/30), paras. 280, 294, 296 and 297.

Annex XII

COMMENTS BY THE WORLD INTELLECTUAL PROPERTY ORGANIZATION

A. INTRODUCTION

1. The General Assembly, in its resolution 48/224, requested the International Civil Service Commission (ICSC) to ensure that place-to-place surveys conducted for all headquarters duty stations were fully representative of the cost of living of all staff working in the duty station. Pursuant to that resolution, a legal consultant was hired by the ICSC secretariat to do a report on the legal aspects of the methodology to implement section II.G of resolution 48/224. In its resolution 50/208, the Assembly requested ICSC to establish in 1996, in respect of staff members whose duty station was Geneva, a single post adjustment index that was fully representative of the cost of living of all staff working in the duty station (the single post adjustment index). The single post adjustment index assumes that such staff purchase goods and services both in Geneva and in neighbouring France regardless of whether they live in Geneva or in neighbouring France. In its resolution 51/216, the Assembly reiterated its request to ICSC urgently to complete its study regarding the methodology for establishing the single post adjustment index for Geneva, and to complete the study needed to implement the single index at the earliest date, and no later than 1 January 1998.

2. The present annex contains observations of the Office of the Legal Counsel of the World Intellectual Property Organization (WIPO) relating to the legality of the single post adjustment index in respect of persons working in Geneva. It also provides a preliminary set of comments on the alternative proposal to establish two indices.

3. WIPO believes that the application of the single post adjustment index to persons working at WIPO would raise very serious legal questions that throw profound doubt on the legality of such a measure. The single post adjustment index would ignore the legal reality of the existence of an international border that separates Geneva from neighbouring France and that renders it legally impossible to treat Geneva and neighbouring France as a single economic unit. WIPO finds the proposal to ignore the legal reality of the existence of an international border to be particularly disturbing when it emanates from an organ of the United Nations, which is founded upon the principle of the sovereignty of States.

4. The Office of the Legal Counsel of WIPO is particularly concerned about the doubtful legality of the introduction of the single post adjustment index in view of the long-established rule that an administration of an international organization is bound to comply with the law. In in re Berlioz, Hansson, Heitz, Pary (No. 2) and Slater (ILO Administrative Tribunal decision No. 1265), the ILO Administrative Tribunal confirmed the responsibility and the duty of any organization that introduced elements of the common system or any other system into its own rules to make sure that the texts it thereby imported were lawful. Consistent with this decision, the Director-General of WIPO assumes responsibility towards the staff of WIPO by incorporating any standards of the common system into the organization's rules. The Director-General would therefore be constrained or legally bound to refrain from implementing the single post adjustment index if such a standard were found to be legally flawed. In this regard, it may be noted that the General Assembly's decision to request

the establishment of a single post adjustment index is not founded on or supported by any legal arguments.

5. The inevitable staff appeals that would result from a decision to implement a single post adjustment index would impose immense difficulties on the organization. WIPO is neither prepared nor presently equipped to devote enormous resources in time and money to defending staff challenges on the legality of a decision to implement the single post adjustment index.

6. The doubts of WIPO concerning the legality of the introduction of the single post adjustment index are set out in the following paragraphs under the following headings:

(a) The legal impossibility of the assumption that persons working at WIPO in Geneva may purchase goods and services indiscriminately in Geneva and in neighbouring France;

(b) The concept of a "duty station";

(c) The acquired rights and legitimate expectations of current staff members;

(d) The right to equal treatment;

(e) The absence of privileges and immunities in France.

B. DISCUSSION

1. The legal impossibility of the assumption that persons working at the World Intellectual Property Organization in Geneva may purchase goods and services indiscriminately in Geneva and in neighbouring France

7. The existence of an international border between Geneva and neighbouring France imposes numerous barriers on the capacity of persons residing on one side of the border to purchase goods and services on the other side. Some of those barriers are the following:

(a) For many residing in Geneva, a visa is required to enter France. The acquisition of a visa requires the expenditure of money and of time. The notional treatment of Geneva and neighbouring France as a single economic unit would force those residing in Geneva to acquire a visa and shop in France if they are to enjoy the same real purchasing power as the purchasing power that would be attributed to them by the introduction of the single post adjustment index;

(b) Quantitative limitations exist on the importation into Geneva of certain products;

(c) Value added tax is imposed on goods and services in France at a different rate to that imposed in Geneva. It is only possible to receive an exemption from French value added tax on goods and services purchased in France by a Geneva resident when the value of those goods and services exceeds a certain amount (which WIPO believes is 2,000 French francs);

(d) Certain services available in France to French residents are not available to Geneva residents (for example, electricity, water and telecommunications), while others are available only at the expense of great personal inconvenience (for example, urgent medical care);

(e) Certain goods are not available in neighbouring France. For example, the towns in neighbouring France do not, because of their size, have in them a computer store, thus obliging persons working in Geneva to acquire computer goods in Geneva. After-sales maintenance is not available in neighbouring France on such goods.

8. It is to be noted also that the choice of living either in Geneva or in neighbouring France is sometimes not legally available to those working in Geneva or is sometimes, for cultural reasons, an unacceptable choice. An example of the legal impossibility of the choice is the situation of a WIPO official living in Geneva whose spouse has been granted a work permit in Geneva. Such an official cannot freely decide to change residence to neighbouring France without jeopardizing the spouse's work permit, since work permits in Geneva granted to those living in France (frontaliers) are granted according to different principles from those applying to Geneva residents and are subject to a quota that does not exist for Geneva residents. An example of the cultural difficulty that the choice of residence in France might raise is the case of an official from Africa, Asia or Latin America who, for cultural and linguistic reasons, chooses to have a national of his or her own country as domestic aid to assist in exposing his or her children to their culture and language of origin. The Swiss authorities accord such a possibility to the official, whereas the French authorities do not, thus making the choice of living in France for such an official a practically unrealistic one.

9. It is also to be noted that the existence of an international border makes the price of the same goods and services different for officials working in Geneva depending on whether they reside in France or in Geneva. If a French resident purchases a computer (or other product) in Geneva, he or she is obliged to pay customs duty on introducing the computer into France. A Geneva resident purchasing the same item pays, therefore, a lower price than the French-resident colleague.

10. The consequences of an international border, in WIPO's view, make it highly questionable to apply the single post adjustment index as if persons working in Geneva were able to live and purchase on an indiscriminate basis in the whole region of Geneva and neighbouring France. The single post adjustment index would lead to numerous cases of fundamental unfairness, as the examples cited above indicate, and to the situation in which officials were accorded a notional purchasing power which, in many cases, would not correspond to the real purchasing power that, as a matter of law and practice, they enjoy.

2. Duty station

11. The introduction of the single post adjustment index contradicts the concept of a duty station for purposes of recruitment into the common system. In WIPO's view, it is counter-intuitive to define a duty station on the basis of residence. Each organization determines its duty station on the basis of legal criteria that will enable the organization and its officials to perform their tasks efficiently. For most specialized agencies of the United Nations system, the concept of a duty station is a matter of treaty law. In the case of WIPO, the Convention establishing the World Intellectual Property Organization

provides that the headquarters shall be "at Geneva". The duty station therefore takes into account the place of work, and staff members are recruited on the implicit assumption that their duty station is Geneva. Consistent with this, staff vacancy notices at WIPO routinely list the amounts of base salary as well as the accompanying post adjustment for Geneva. This creates a reasonable and legitimate expectation on the part of staff members, an issue which is discussed below.

12. The creation of the single post adjustment index would implicitly extend the notion of a duty station - and, as a result, the notion of a headquarters in relation to a number of other matters - to cover two countries. This would have serious implications for international public law. For the international organizations, this would imply the need for a headquarters or status agreement with France.

3. Acquired rights and legitimate expectations of current staff members

13. The ILO Administrative Tribunal has held in various cases that even though staff may have an acquired right to a particular allowance or benefit or adjustment, staff do not have such a right to a particular amount of such allowance, benefit or adjustment, or to a particular method for calculating such amount. In our view, however, a common factor in those cases was that the proposed changes were not of such a magnitude or of such significance as to amount to an infringement on the acquired rights of the staff members in question. Indeed, in the case of in re Ayoub et al. (ILO Administrative Tribunal decision No. 832), ILO expressly stated that, before making a determination on the issue of acquired rights, the Tribunal "must in each case determine whether the altered term [of appointment in consideration of which the official accepted appointment] is fundamental and essential". To the extent that all vacancy notices at WIPO clearly state the base salary and the corresponding post adjustment for Geneva, it is arguable that at least some, if not most, WIPO staff accept employment with the organization in the knowledge that their duty station would be Geneva, as a result of which the post adjustment at any time would reflect the cost of living in Geneva. The creation of a single post adjustment index that significantly reduced the take-home salary of such employees (for example, by as much as 5 or 6 per cent) would clearly be a violation of their acquired rights and legitimate expectations. Indeed, the practical effect of imposing the single post adjustment index would be to create a disincentive for international civil servants working in Geneva to reside in the same town and country as they work.

4. Right to equal treatment

14. In the established practice of the United Nations common system, staff members have the right to an opportunity to enjoy equal treatment for equal work. The principle of equal treatment applies in two different contexts:
(a) equal treatment of Professional staff at the different duty stations, and
(b) equal treatment of Professional staff with the General Service staff.

(a) Equal treatment of Professional staff at different duty stations

15. The principle of equal treatment of Professional staff at different duty stations requires that the post adjustment for each duty station be calculated on the basis of the cost of living in that duty station. This principle can be

upheld only by calculating the post adjustment for Geneva on the basis of the cost of living in Geneva. Indeed, the alternative would imply that employers in one country would pay salaries on the basis of the cost of living in another country. This would have serious implications for labour law, and would constitute a most unfortunate precedent created by a system which includes ILO and which is based on the sovereign difference of individual States.

16. An attempt to uphold the principle of equal treatment must take into account the above-mentioned physical and legal reality of an international border separating France from Switzerland. A single post adjustment index may work perfectly in areas such as metropolitan New York, for the simple reason that staff members can choose to reside anywhere within that area without attendant inconvenience and petty annoyances or delays at an international frontier. This freedom of choice, however, does not apply to all staff members in Switzerland. For example, Swiss nationals, who comprise 5 per cent of the Professional staff at WIPO, are not allowed to live in France. Other Professional staff who are hired for less than six months are also precluded from living in France. It would be inherently unfair and arguably illegal to apply a post adjustment index that reflects prices in France to such staff members who could only live in Switzerland.

17. The post adjustment index contains in-area as well as out-of-area components. Those residing in Switzerland would have their out-of-area components of the post adjustment index counted twice, as the prices in France already would have been included in assessing the Geneva index or cost of living.

18. In any event, it can hardly be denied that staff members who opt to live across the border in France will sometimes experience considerable obstacles and inconvenience in crossing the border. The implementation of French immigration law is sometimes less than satisfactory in its application to certain nationalities.

(b) Equal treatment of Professional staff with General Service staff of the United Nations

19. In accordance with the Flemming principle, the salaries of General Service staff are calculated on the basis of the best prevailing salary rates in Geneva. No distinction is made on the basis of residence in surrounding areas with a lower cost of living. Any attempt to introduce the single post adjustment index for Professional staff would clearly be discriminatory in its effects. It would further exacerbate the problem of staff management, as the lower-level Professional staff currently earn less than certain categories of General Service staff in view of the fact that General Service staff salaries are based on Swiss comparators.

20. It also may be recalled that residents of France working in the private sector of Switzerland are paid the same rates of salary as their counterparts resident in Switzerland. Likewise, organizations such as the European Organization for Nuclear Research do not make any distinction between residents of Switzerland and of France in terms of salaries.

5. Absence of privileges and immunities in France

21. The proposal of the single post adjustment index is based on the false premise that staff members of the United Nations who opt to live in France will

be entitled to the same benefits and privileges as their counterparts in Switzerland. France is not a party to the Convention on the Privileges and Immunities of the Specialized Agencies; nor has it signed any headquarters agreement with any of the Geneva-based United Nations agencies. It is recalled that, while the United States also is not a party to the Convention, it has nevertheless enacted specific legislation on the privileges and immunities of international organizations, which apply to all relevant staff irrespective of their areas of residence. In contrast, staff members who opt to reside in France risk being subjected to much less favourable legal protections than those who live in Switzerland. For those staff members resident in France, the benefits of a lower cost of living could be diminished or offset by income tax on their earnings from work performed in Switzerland. It would be asking too much of the specialized agencies to require them to reimburse the taxes paid by all staff members who were to be encouraged, by the introduction of the single post adjustment index, to live in France.

C. SOME PRELIMINARY VIEWS ON THE PROPOSAL TO ESTABLISH TWO POST ADJUSTMENT INDICES

22. The views of WIPO on this issue are at best preliminary observations. In the absence of a proposed methodology by which two separate post adjustment indices would be created, the present comments are far from detailed, and WIPO reserves the right to comment more extensively on this issue at a later time in the light of specific proposals.

23. The introduction of two separate post adjustment indices would violate the principle of "equal pay for equal work". There is an inherent unfairness in determining the salary rates of staff who do the same work simply on the basis of their place of residence.

24. The imposition of two post adjustment indices is legally impossible, to the extent that there is no "duty station" across the border in France. Indeed, the creation of two separate indices for the same duty station is incompatible with the rationale behind the United Nations post adjustment system. For example, it would be ludicrous to suggest separate and distinct post adjustment indices for those resident in New York and in New Jersey.

25. The administrative burden that would be created by two post adjustment indices would be enormous. For example, WIPO would have to monitor and constantly verify the place of residence of its staff members. It is also difficult to imagine how, for example, officials separated from their spouses and families should be treated under such a system. If the separated spouse and family were to reside in France, and the official had an obligation to provide maintenance, would the post adjustment index for Geneva or that for neighbouring France apply or some combination of both?

D. CONCLUSION

26. The post adjustment index, as currently assessed, amounts to more than a third of the total remuneration of staff assigned to the Geneva duty station. In view of the significance of the post adjustment index, any proposals to modify it should be based on reasonable and, more importantly, legally valid arguments. For the reasons explained above, WIPO is unable to discern any legal or rational bases for the introduction of the single post adjustment index or two separate indices in respect of persons working in Geneva.

Annex XIII

COMMENTS BY THE WORLD METEOROLOGICAL ORGANIZATION

1. The purpose of the present letter is to submit the views and comments of the World Meteorological Organization (WMO) to the Legal Counsel of the United Nations for his opinion.

2. These views and comments focus essentially on the three alternative courses of action.

A. Single post adjustment index for Geneva

3. WMO wishes to endorse the legal arguments put forward by the other Geneva-based agencies, in particular the International Labour Organization (ILO) and the International Telecommunication Union (ITU). They are, therefore, not being repeated here.

4. WMO, however, feels that the following issues may need to be briefly re-emphasized:

(a) The purpose of an organization's headquarters agreement is to govern the legal status of the organization and its staff in the host country concerned. Its provisions dealing with staff relate to their protection, the independent exercise of their duties as well as to issues related to their entry and residence in the host country. Like other Geneva-based United Nations agencies, WMO has, thus far, not concluded any other host agreement for its headquarters with any country other than Switzerland;

(b) WMO staff who have opted to reside in France, a different sovereign State with international borders and customs posts, have done so on a purely personal basis. Inasmuch as it is the prerogative of the organization eventually to discourage, if not restrain, their staff from establishing themselves in France, their residing in France could be as easily revoked at any time by the French authorities. It is, therefore, felt unacceptable to take a totally informal, de facto situation into account as a basis for arriving at formal decisions containing serious legal implications;

(c) One of the absurd consequences of a single post adjustment index would be the economic and money incentive it creates for staff to move to France, thereby eroding not only the relationship but also the very reason and fundamental essence of the agreement with the host country and leaving the fate of staff in France, in the absence of any host agreement, to the unwritten rules and practices of a merely tolerant administration. This should be considered in the context of the fact that WMO draws its staff from its 179 members and that, at present, it employs 70 nationalities, many of them from countries far away from France;

(d) In addition, a single post adjustment index that would result in a substantive reduction of the net take-home salary could be seen as violating staff members' acquired rights and legitimate expectations as well as their right to equal treatment, be it among Professional staff or among Professional staff and General Service staff in Geneva;

(e) Its introduction would not contribute to solving the problem of the overlap between salaries of the General Service and the Professional staff and it would ultimately lead to unavoidable repercussions on the pension levels of retirees who would feel penalized a second time once they reach retirement;

(f) Concerning the proposed methodology, WMO is concerned with the fact that conclusions seem to be derived from erroneous assumptions that all staff have equal, if not unlimited, access to the French territory, be it for shopping or for residence purposes or that staff residing in Switzerland do their shopping in France unhindered, freely and not subject to customs check and formalities, whereas those established there necessarily purchase all their goods in France;

(g) Moreover, by including prices in France for assessing the cost of living in Geneva, the proposed single post adjustment index would result in double counting of expenses: once because out-of-area expenses are counted under the out-of-area component of the post adjustment index, and a second time because their purchases in France are counted in the proposed single post adjustment indexes;

(h) As you are aware, it is the duty of any organization that introduces elements of the common system or any other system into its own rules to make sure that the texts it thereby imports are lawful (ILO Administrative Tribunal judgement No. 1265). Consistent with this judgement, the Secretary-General of WMO would be bound to refrain from implementing it if he concluded that the promulgation of the proposed single post adjustment index was legally flawed;

(i) Without going into the issue of whether or not the new methodology falls within the Commission's mandate, it is essential that any proposed methodology must be legally acceptable.

5. Based on the false premise that staff who opt to reside in France are entitled to the same benefits and privileges as their counterparts in Switzerland, it is felt that the proposal lacks a sound legal basis which makes its introduction another good candidate for legal challenge, particularly from staff who have no right to enter or reside in France.

B. Two separate post adjustment indices

6. This proposal does not reduce the risk of legal challenge. On the contrary, the disparity of remuneration arising from the location where staff choose to reside can be construed as violating the principle of equal pay for equal work. It is therefore considered unacceptable.

C. Other options

7. The organization has no option to suggest other than to keep the present status quo situation in force and consider that the advantage obtained by some staff who do a part of their shopping and purchases in France is covered by the out-of-area component of the post adjustment.

8. In concluding, it should be stated that, at a time when the organizations are preoccupied with attracting competent staff and their retention, and given the lack of a competitive remuneration package of the United Nations common system, it is essential that WMO at least ensures that the cost of living in Geneva is properly calculated to allow it to be legally comparable with all other locations.

COMMENTS BY THE UNITED NATIONS LEGAL COUNSEL ON THE LEGAL ISSUES RAISED BY ORGANIZATIONS

A. Background

1. The General Assembly's mandate to the Commission

1. In section II.G of its resolution 48/224, the General Assembly requested the International Civil Service Commission (ICSC) to ensure that place-to-place surveys conducted for all headquarters duty stations were fully representative of the cost of living of the staff working in the duty station.

2. In section I.B of its resolution 50/208, the General Assembly requested the Commission to establish in 1996, in respect of staff members whose duty station was Geneva, a single post adjustment index that was fully representative of the cost of living of all staff working in the duty station and that ensured equality of treatment with staff in other headquarters duty stations.

3. In section I.E of its resolution 51/216, the General Assembly reiterated its request to the Commission urgently to complete its study regarding the methodology for establishing a single post adjustment index for Geneva, and to complete the study needed to implement the single post adjustment at the earliest date, and no later than 1 January 1998.

2. The Commission's work to implement these mandates

4. The Commission's activities in attempting to discharge these mandates are set out in the appendix to the present opinion.

3. Issues presented to the Legal Counsel

5. After the deliberations described in the appendix the Commission, at its spring 1997 session, decided that the views of the organizations and staff at Geneva would be sent to the Legal Counsel for his opinion in the light of the following alternative courses of action:

(a) A single post adjustment index based on prices in Geneva and the border areas of France;

(b) Two separate post adjustment indices, i.e., one based on Geneva prices and the other based on prices in the border areas of France;

(c) Other options that could be presented to the General Assembly.

6. I was informed that consultations had been held with the Geneva-based organizations between 11 and 13 June 1997 (no staff participated) and I was supplied with a document entitled "Notes on the consultations on the Geneva post adjustment by the Chairman of the Advisory Committee on Post Adjustment Questions" (see annex VII to the present report), which were "accepted by all participants as representing, in general, the views presented" (see annex VII, para. 3). In addition I was given written comments sent to the Commission from the International Labour Organization (ILO), the International Telecommunication

Union (ITU), the World Health Organization (WHO), the World Intellectual Property Organization (WIPO) and the World Meteorological Organization (WMO) (see annexes VIII, IX and XI-XII), and I received directly a submission from the Director of Personnel of the Office of the United Nations High Commissioner for Refugees (UNHCR) (see annex X) which submission agrees generally with the submissions of the Geneva-based organizations without entering into a legal analysis of the issues, so their submission is not separately analysed. My opinion, which is limited to legal issues, follows the structure of the notes since they were agreed between the participants.

4. Preliminary observation

7. As it appears from the material that forms the basis of the present exercise, the idea of establishing a single post adjustment index for Geneva is perceived with great apprehension at that duty station. All Geneva-based organizations concerned have - through their legal advisers, also my colleagues - invoked various reasons why a system along the lines decided by the General Assembly would not work. Primarily, the system is considered to be in conflict with the obligations vis-à-vis members of the staff. Some of the arguments offered no doubt carry weight. However, they must be seen in the light of the fact that the result of the exercise will be a reduction in the remuneration of staff at Geneva.

8. The concern of the General Assembly is that the present system is unfair in relation to staff members at other headquarters duty stations (see resolution 48/224 cited in para. 1 above). A striking feature, common to all submissions received from Geneva, is that apart from a general comment that Geneva cannot be compared to other duty stations because of the existence of the border (see ILO, annex VIII, paras. 4-8; WHO, annex XI, para. 8; WIPO, annex XII, para. 3) not a single word is devoted to the reality of this aspect of the problem, i.e., that only high cost areas are included and that the lower cost areas, where over one third of the staff live, are excluded from calculation of the post adjustment. The submissions from the Geneva-based organizations could, therefore, be seen as pleas from interested parties rather than critical analyses in order to assist the General Assembly in finding a solution to a problem which undoubtedly exists. It is obvious that any conclusion on my part which supports the idea expressed by the General Assembly will be challenged, ultimately before the Administrative Tribunals.

9. The legal aspects are but part of a problem that also has political, practical and administrative dimensions. A cost-benefit analysis of the whole exercise should therefore be undertaken before a final decision is taken (see also ILO, annex VIII, sect. II). This analysis falls outside my mandate. But my message must be clear: there is no way that an opinion of the Legal Counsel can guarantee that a solution, accepted by him, will also stand the test which the system will be subjected to before the Administrative Tribunals. However, the likelihood that a new system will be accepted by the Tribunals will increase, if the system is accompanied by appropriate transitory provisions.

5. General comment by the Legal Counsel

10. I note that all participants involved in the consultative process agreed on the role of the Commission and the essential need to maintain the common system, a goal emphasized by the General Assembly on many occasions.

11. I also note that in its resolution 51/216 the General Assembly sought completion of the study needed to implement a single post adjustment at the earliest date, and no later than 1 January 1998. This language was evidently viewed by the Commission as enabling it to propose other alternatives to the Assembly since the Commission decided that the study should include other options that could be presented to the Assembly (see para. 5 (c) above). I consider that this approach is a valid exercise of the Commission's discretion in seeking to implement the Assembly's resolution.

6. Opinion with respect to the alternatives set out in the notes

(a) Single post adjustment index on the basis of prices in Geneva and the border areas of France (annex VII, para. 6 (a))

(i) Utilization of data from France: general questions

Views of the organizations

12. The Geneva-based organizations considered that the utilization of data from France was improper in law because the duty station was Geneva, Switzerland, and not France, and this meant that the place of assignment was Geneva and not the place where staff lived. That result was either by consistent interpretation of the organizations' headquarters agreements or because of definitions of the duty station in their staff regulations or rules. It was argued that a post adjustment index that included data from France violated the right of staff to choose where they wanted to live and that collection of such data would require changes to the legal texts which defined a duty station prior to implementation of any decision for a single post adjustment index (see annex VII, paras. 8-11; ILO, annex VIII, paras. 12-15; ITU, annex IX and appendix I; WHO, annex XI, paras. 7-39; WIPO, annex XII, paras. 7-12; and WMO, annex XIII.

13. Furthermore, the Geneva-based organizations also pointed out that in law the duty station could not be extended to areas in France since France had neither ratified the Convention on the Privileges and Immunities of the Specialized Agencies, nor entered into headquarters agreements with the organizations so the organizations could not provide legal protection to their staff (see annex VII, paras. 8-11; ILO, annex VIII; ITU, annex IX, appendix I; ITU Legal Affairs Unit, annex IX, appendix II, paras. 3-19, 33 and 53-56; WHO, annex XI, paras. 7-15 and 24-28; WIPO, annex XII, paras. 11, 12 and 21).

Opinion of the Legal Counsel

14. The basic purpose of a post adjustment index is to measure relativities of actual expenditure patterns between a given duty station and New York, which is the base of the system. Thus, first to be considered in both cases is the duty station area where expenses occur. There is, therefore, no particular reason why the measurement of actual expenditures of staff assigned to the duty station as "named" (in this case Geneva) has to be limited to the duty station since what is being measured is consumption patterns of staff residing in the duty station area to ensure equality of purchasing power. It is thus hard to see why an index could not look at the reality of staff expenditures: the reality in the case at hand is that over one third of the staff live and spend money in France. In other words, I fail to see why taking account of actual expenditure patterns is a violation of the rights of the staff, just as, at the base of the system, data is collected in what is considered as the New York area even though

it is outside the five boroughs of New York City, which is the "named" duty station.

15. I, of course, admit that the arguments put forward by the Geneva-based organizations have some merit and that it is difficult to predict how the Administrative Tribunals will assess the competing arguments, should the system be challenged. However, any legal assessment is a matter of judgement and, after careful consideration, I consider that the definition of the extent of a duty station does not constitute a legal bar to taking into account actual expenditure by a substantial proportion of staff who have voluntarily chosen to reside within the duty station area without the protection of the Convention on the Privileges and Immunities of the Specialized Agencies. Admittedly, had the organizations prohibited staff from living in France, the use of French data might have been objectionable; but that is not the case. In other words, I view measurement, for the purpose of calculation of post adjustment, of actual expenditure patterns in areas where the staff have freely chosen to reside as not being in violation of their rights.

16. In relation to the need to amend their own regulations, rules or other legal texts, I note that the organizations are responsible for their own legal instruments and so I would suggest that the Commission recommend that the General Assembly give the organizations the time needed by them to amend those texts, should a single index be promulgated which takes account of actual expenditure patterns of staff living in France.

(ii) Utilization of data from France: does the Commission violate its statute?

17. The Geneva-based organizations argue that the utilization of French price data would alter the definition of a duty station which is a responsibility of the organizations and not the ICSC, which can only classify duty stations for the purpose of applying post adjustments and thus any action by ICSC would violate its statute (see annex VII, para. 12; and ILO, annex VIII, para. 10).

18. For the reasons set out in paragraphs 14 and 15 above, I do not share this view because ICSC is establishing a measurement of comparative costs based on the pattern of consumption of staff and is not defining, per se, the extent of a duty station.

(iii) Utilization of a single post adjustment index using French data: is the principle of equality of treatment violated since not all staff are permitted to reside in France?

Views of organizations

19. The Geneva-based organizations state that not all staff are permitted by law to reside in France (they note that short-term staff are excluded, as are the staff of certain nationalities). They also note that staff who are permitted to reside in France do so at the pleasure of the French authorities and have a precarious status because France has not ratified the Convention. They argue that these factors make it legally improper to use French data to compile a single post adjustment index (see annex VII, paras. 13 and 15; ITU, annex IX, paras. 22-28; ITU Legal Affairs Unit paper, annex IX, appendix II, paras. 20-30 and 45-52; WHO, annex XI, paras. 7-10 and 16-38; WIPO, annex XII, paras. 14-18; and WMO, annex XIII.

20. Some of the Geneva-based organizations are also of the opinion that there would be a violation of the principle of equality with respect to General Service staff and with other organizations, such as the European Organization for Nuclear Research (CERN), which do not distinguish on the basis of place of residence (ILO, annex VIII, paras. 16-26;[a] and WIPO, annex XII, paras. 19 and 20).

Opinion of the Legal Counsel

21. The organizations take the view that the utilization of data in an index that is based on purchases in France would not be proper given the real obstacles to living in France faced by a not insignificant number of staff and by an entire category of staff (short-term staff; WHO notes that in 1996 they granted 534 of these appointments, see WHO, annex XI, para. 19). They also argue that this conclusion has apparently already been accepted in Commission practice; since diplomatic privileges are not open to all staff, diplomatic purchases are excluded. On the other hand, it is true that price data for New York is obtained from some areas that are out of bounds for staff of certain nationalities who are restricted to 25 miles from Columbus Circle in New York City (although it could be argued that this is different because such price data is not used to establish salaries at New York, the base of the system).

22. As noted above, assessment of the legal objections of the organizations is a matter of judgement. No post adjustment system can be flawless, and it is difficult to argue that nothing short of "absolute justice" is acceptable. The present system is not fair in relation to staff members at other headquarters duty stations and it is therefore understandable that the General Assembly wishes to change it. If, in the course of this exercise, it is not possible to design a system that is completely free from objections, it becomes a matter of judgement where to strike the balance. There are many factors that influence the purchasing power of staff members, and the salaries of United Nations staff are subject to change, also negative change. However, purchasing power is but one factor when a person decides whether to accept a position as a United Nations staff member. Therefore, the details behind the post adjustment system should have only a marginal effect with respect to prospective staff members and, in particular, staff on short-term contracts. Seen in this perspective, the problems envisaged are more in relation to existing staff and their acquired rights. However, any problem with respect to these staff members can be addressed by appropriate transitional measures.

23. Having regard to these considerations, I think that a single post adjustment index based, inter alia, on expenditures in France should be possible to implement, in particular if it is combined with appropriate transitional measures. However, such a system could be struck down by the Administrative Tribunals on the basis that it violates the principle of equality, in that, by law, individual staff members and an entire category of staff are prohibited from living in France.

24. I did not find convincing the argument that the principle of equality is violated because General Service staff are paid on the basis of conditions in Geneva (see annex VII, para. 16). Since the systems of remuneration of Professional and General Service staff are entirely different, the two situations are not comparable. Hence, the essential condition for applying the principle of equality is absent.

(iv) Would a new post adjustment index that resulted in a large salary drop violate the doctrine of acquired rights?

Views of organizations

25. The Geneva-based organizations were of the view that a new system of post adjustment that results in a large drop in post adjustment would violate the acquired rights of staff. Those submissions admit that, although there can be no acquired right to the way in which an allowance is calculated, there would be a violation of acquired rights, at least as established by the jurisprudence of the ILO Administrative Tribunal, if the result of the new methodology resulted in a significant drop in salary (which they consider will occur since the reduction would be of the order of 5 per cent) which would have the effect of altering unilaterally a fundamental condition of employment (see ILO, annex VIII, paras. 31-34 and 38-40; ITU Legal Affairs Unit paper, annex IX, appendix II, paras. 35-44; WHO, paras. 51-60; WIPO, annex XII, para. 13; and WMO, annex XII).

26. It was also said that the technical defects of the index are such that it would violate the rights of staff, principally because out-of-area components would be counted twice and there were differences in housing cost methodology as compared to the other headquarters duty stations (ILO, annex VIII, paras. 27-30).

Opinion of the Legal Counsel

27. The United Nations Administrative Tribunal doctrine of acquired rights is at present a little more narrow than that of the ILO Administrative Tribunal, and is essentially a prohibition against retroactive changes in rules, although the United Nations Administrative Tribunal has emphasized that changes must not be arbitrary (see Judgement No. 546, Christy et al.).

28. I refer to my reasoning in paragraphs 22 and 23 above. In essence, it is difficult to predict how the Administrative Tribunals would react to a 10 to 15 per cent drop in post adjustment, which, I was informed would be equivalent to about a 5 per cent reduction of salary. However, if the index were technically sound, I consider that there is a reasonable chance that the Tribunals would find that the introduction of a new index, which accurately reflected actual expenditure patterns, does not violate the doctrine of acquired rights, especially since the transitional measures adopted by the Commission would apply (see the Commission's 1990 annual report).[b]

(b) Maintenance of the status quo (annex VII, para. 6 (b))

(i) Views of organizations

29. The notes by the Chairman of ACPAQ indicate that all the Geneva-based organizations were in favour of the maintenance of the status quo (see annex VII, para. 6 (b)).

(ii) Opinion of the Legal Counsel

30. The real difficulty with the maintenance of the status quo is that the General Assembly has asked for a change, and the Commission is bound to try to effect such a change. However, it must be admitted that the introduction of any of the alternatives being considered by the Commission may result in years of litigation before both Administrative Tribunals and the cost and disruption

caused by such litigation needs to be assessed against the cost benefits of the new system; particularly when transitional measures would be needed to ensure that the introduction of the new system did not violate acquired rights of staff (see further, paras. 44 and 45 below).

(c) Single post adjustment index with Geneva prices compared to Manhattan prices (annex VII, para. 6 (c))

31. The legal consultant suggested that a single post adjustment could be constructed based on price surveys in Geneva, as at present, but compared to a special index in New York that would only include Manhattan.

(i) Views of organizations

32. This proposal was not discussed in great detail in the replies of the organizations. One organization opposed this suggestion because the current system was a fair and equitable one that took into account the fact of a national border, whereas the consultant's proposal is a system of "rough justice" which is of doubtful validity because of technical objections to the way in which the price comparison would be calculated (see ITU, Legal Affairs Unit paper, annex IX, appendix II, paras. 64-68). ILO considered that its objections applied to all alternatives (see ILO, annex VIII, para. 9).

(ii) Opinion of the Legal Counsel

33. The great merit of this proposal is simplicity. However, as the consultant admits, this is "rough justice" and this is a weakness of the proposal. However, the proposal does attempt to deal with a difficult problem in a fair way by ensuring that, if low-cost areas are excluded in one location because of alleged insuperable difficulties of taking account of lower cross border costs, such lower cost areas should be excluded in the other half of the comparison, i.e., at the base.

34. The real difficulty is, as I understand it, not a legal problem but a technical problem in that use of a Manhattan base for New York would result in raising the base of the system and that would have worldwide application since all duty stations are measured by reference to the base. Of course, the Manhattan index could be used just for Geneva but the fact that it was used in one place might lead to demands that it be used on a universal basis.

(d) Dual post adjustments (annex VII, para. 6 (d))

(i) Views of organizations

35. The objections to a dual track post adjustment system based on actual residence of staff are said to comprise an inequality between the treatment of staff assigned to Geneva and the treatment of staff assigned to other duty stations since, in other duty stations, a single post adjustment covers the entire area and enables a staff member to decide whether to live in an expensive or less expensive area (ILO, annex VIII, paras. 1-3 and 16-26; ITU, annex IX, paras. 29-32; ITU Legal Affairs Unit paper, annex IX, appendix II, paras. 60-62; WHO, annex XI, paras. 44-47; and WMO, annex XIII).

36. It was also argued that the effect of a dual track post adjustment is that an employer in one country would pay salaries based on costs in another country, which does not respect the sovereign difference of States (WIPO, para. 15) and that the post adjustment mechanism is not an appropriate mechanism for dealing

with the peculiar geographic nature of Geneva as a duty station (WHO, annex XII, paras. 49 and 50).

37. Another objection was said to be that the principle of equal pay for equal work would be offended (ILO, annex VIII, paras. 16-26; WHO, annex XI, para. 48) and that it would restrict the freedom of employees to dispose of their salary where they wanted (ILO, annex VIII, paras. 16-26).[c]

38. The legal problems of verifying the actual residence of staff were also raised (ITU, annex IX, paras. 47-50; and WHO, annex XI).

(ii) Opinion of the Legal Counsel

39. The Legal Counsel considers that a dual post adjustment index that looks at prices based on the actual place of residence of a staff member is acceptable from a legal point of view given the difficulty of attempting to establish a single post adjustment across national boundaries. The fact that over one third of staff live in France appears to indicate that an index that ignores that fact cannot serve the purpose of ensuring that the purchasing power of staff in Geneva is equivalent to those at the base of the system. It would thus appear reasonable to take account of such costs when establishing a post adjustment index designed to equalize their purchasing power as compared to the base of the system where costs of staff living outside the high cost Manhattan area are taken into account.

40. Since the purpose of post adjustment is to equalize purchasing power between staff at the base and other duty stations, I do not think that a dual system would be found to violate the principle of equal pay for equal work since it attempts to ensure that, even if staff reside in an area that is across a national boundary, those staff have emoluments of similar purchasing power to those at the base, which is basic to any worldwide system of salary fixation. However, some organizations may have to amend their internal rules to implement such a dual post adjustment mechanism scheme and the introduction of any dual post adjustment mechanism should be delayed to enable the organizations to effect such change (see para. 16 above).

41. My conclusion on acquired rights would also apply to any reduction in post adjustment caused by the introduction of a dual track system (see paras. 27 and 28 above).

42. In my view, a post adjustment system that uses data based on actual place of residence seems reasonable and I consider that the Administrative Tribunals are unlikely to find that such a system violates the rights of staff who have chosen to live in France since the system simply recognizes the effect on purchasing power of such a choice.

(e) A post adjustment index on a larger area but that takes in account all factors (annex VII, para. 6 (*d*))

43. In my opinion this alternative is so vague that it is not susceptible of legal analysis unless it were to be formulated in more detail.

7. Additional matter: responsibility of organizations for legality of decisions

(a) Views of organizations

44. A number of the organizations have noted that the ILO Administrative Tribunal has held that they are responsible to their staff for the legality of decisions taken by them in implementing common system decisions. They have suggested that if the General Assembly implements a post adjustment index that takes account of French prices over the objections of the Geneva-based organizations that they might be constrained to comply with their legal duty to reject such an index relying on Judgement No. 1265, in re Berlioz et al, pages 10 and 11 (ILO, annex VIII, paras. 35-37; and WHO, annex XI, paras. 62-64).

(b) Opinion of the Legal Counsel

45. It is of course clear that if the organizations applied a decision or recommendation of the Commission that was found by an Administrative Tribunal to have violated staff rights, the organizations would be responsible. This is the normal outcome of a successful appeal against an administrative decision. However, in so far as the argument relates to the duty to protect staff from what the Geneva-based organizations consider to be illegal actions of the General Assembly by not implementing them, the Legal Counsel considers that it is necessary to distinguish between decisions that on their face are clearly illegal (for example, differing post adjustments based on race) to actions that might be subject to challenge and where the outcome is not predictable (for example, whether the utilization of prices based on the place of residence of staff would violate the rights of staff). While there is clear justification for refusing to implement a decision in the former category, there is in my view no justification for an organization to refuse to implement a decision of the General Assembly in the latter category just because the outcome of an appeal cannot be predicted with absolute certainty.

Notes

[a] However these arguments were used against the double index rather than the single index.

[b] Official Records of the General Assembly, Forty-fifth Session, Supplement No. 30 (A/45/30), para. 141.

[c] It is also said that a dual post adjustment index would violate the acquired rights of staff since it would result in a substantial change to emoluments, of the order of a 5 to 10 per cent drop in post adjustment, which is about half of a staff member's emoluments (ILO, annex VIII, paras. 16-26; and WHO, annex XI, paras. 51-61). This is dealt with at paras. 27 and 28 of the present annex.

Appendix

SUMMARY OF THE COMMISSION'S ACTIVITIES IN RELATION TO THE GENEVA POST ADJUSTMENT, PREPARED BY THE UNITED NATIONS LEGAL COUNSEL

Pursuant to resolution 48/224

1. The Advisory Committee on Post Adjustment Questions (ACPAQ) considered the Geneva post adjustment at its May 1994 meeting.

2. The ACPAQ study noted that there were, excluding the United Nations for which there were no data,[a] an estimated 1334 Professional and higher level staff who worked in Geneva, of whom 507 (38 per cent) lived in France.

3. ACPAQ noted that conceptually it was possible to have one index for Geneva weighted by reference to the residence of staff; another approach was to have two indices.

4. The ACPAQ report indicates that the principal difficulty perceived by the Geneva-based organizations was that France was a separate country; that not all staff had a right to live in France, and that France had not signed the Convention on the Privileges and Immunities of the Specialized Agencies. It was also noted that many organizations had Geneva as the duty station in their staff regulations and rules or even in their constitutional instruments and that that would prevent an extension of the duty station to France. The report also notes that the Federation of International Civil Servants' Associations (FICSA) and the Coordinating Committee for Independent Staff Unions and Associations of the United Nations System (CCISUA) were opposed to the revision of the index, principally because some staff could not reside in France and because of the difficulties of bringing products into and out of France. FICSA was of the view that it was "totally inappropriate" for the Commission to address the issue while CCISUA, although opposed, noted that if anything had to be done it had to be on the basis of two indices.

5. At its fortieth session, from 20 June to 8 July 1994, the Commission postponed consideration of the matter to its forty-first session in view of the complex issues raised in the ACPAQ report.

6. At its forty-first session, in May 1995, the Commission noted the problem of a single index and its impact on staff who by law could not live in France. It also noted that the existence of two indices could be seen as violative of the principle of equal pay for equal work. It further noted that the organizations considered that the legal aspects of the problem should be considered first; in particular, the problem of the national border and the definition of the duty station as Geneva, as well as the possible violation of the acquired rights of staff by the impact of a large reduction in take home pay. In addition, the problem of the privileges and immunities of the organizations should also be considered since staff who resided in France were not protected by the Convention on the Privileges and Immunities of the Specialized Agencies. The Commission remarked that although the United Nations did not confine the concept of the duty station to Geneva most of the other organizations would have to change their regulations or rules and thus the Commission had decided to seek legal advice. The Commission noted that the staff associations opposed any change to the way the Geneva post adjustment index was calculated.

7. The Commission retained a legal consultant who provided an opinion to the Commission.[b]

8. The consultant stated that if amendments to the rules of the Geneva-based organizations were required those organizations had an obligation under the ICSC statute to make those amendments.

9. The consultant was of the view that there was no acquired right to the methodology of calculation of an allowance nor to the definition of a duty station. He also noted that to exclude a relevant area where purchases were made was inconsistent with the approach at other headquarters duty stations and there could be no acquired right to continuation of such an anomaly.

10. The consultant considered that the preclusion of some staff from living in France might be an objection to a single index but it was important to ascertain how many were involved. A separate index for Geneva for persons by law precluded from residing in Geneva might be a solution. Even though a dual index was different to indices at other duty stations it could be justified by the difference in circumstances in that there was a national border at Geneva which led to objections to a single index.

11. The consultant noted that the dual index approach also had to be considered in the light of the principle of equal pay for equal work since staff could, in other duty stations, decide to live in cheaper suburbs and thus to save more. If staff, who were precluded from living in an area, nevertheless had their post adjustment calculated by reference to costs in that area there could be a violation of the principle of equal pay for equal work. In the view of the consultant, whether that principle would extend to preclude application of a consolidated index on those who chose to live in Geneva was hard to say but should perhaps be treated as something falling within the margin of legislative or administrative discretion.

12. The consultant did not consider relevant that France had not signed the Convention since some 40 per cent of staff were living in France and some staff of the Geneva-based organizations were living in New York even though the United States had not ratified the Convention either.

13. The consultant suggested that, perhaps, the present index with price surveys limited to Geneva could be maintained but compared to price levels in Manhattan. The idea would be to exclude the lower priced areas where staff resided in New York, just as lower cost areas of France were excluded in relation to Geneva.

14. The Commission considered the matter at its forty-second session, in July and August 1995.[c]

15. The International Labour Organization (ILO) submitted a paper in which it reached conclusions that differed from those reached by the consultant.[d] The principal points of difference were that ILO considered that:

(a) The Commission had no competence to redefine duty stations to coincide with the residence of staff;

(b) The Commission could not extend the notion of a duty station to another country where there was no right of residence and where some staff members were excluded;

(c) Equal treatment with other duty stations was not affected by restricting price gathering to Geneva since the affected staff members in Geneva, as compared with those in France, did not complain; the real problem was that there was a border and that was not the same thing as living in a different suburb or State as in the case in New York;

(d) Two indices, one for Geneva and one for France, would result in unequal treatment as compared to the General Service. Also some staff were not permitted to live in France and standard ICSC methodology excluded any benefit such as diplomatic privileges that were not extended to all.

16. The Consultative Committee on Administrative Questions (CCAQ) also expressed disagreement with the consultant's report,[e] while ILO repeated the arguments set out in its paper.[f] CCISUA and FICSA opposed any change in methodology, stating that such change would result in unequal treatment of staff working at the same duty station.[g]

17. The Commission, after noting the difficulties posed by ILO, observed that some 40 per cent of staff lived in France and that in order to determine a proper post adjustment it was necessary to take account of actual expenditures rather than to focus on the definition of a duty station.[h] Some members of the Commission examined the ACPAQ options and indicated a slight preference for a single post adjustment, based on prices where staff actually lived.[i] Other members of the Commission, however, considered that there should be two post adjustments. As there was no clear preference, the Commission decided to report its discussion to the General Assembly.[j]

Pursuant to resolution 50/208

18. In section I.B of its resolution 50/208, the General Assembly requested the Commission to establish in 1996, in respect of staff members whose duty station was Geneva, a single post adjustment index that was fully representative of the cost of living of all staff working in the duty station and that ensured equality of treatment with staff in other headquarters duty stations.

19. ACPAQ met in March 1996 and considered a number of technical options for a single index for Geneva.

20. The Commission considered the matter at its forty-fourth session, in July/August 1996. The Chairman of CCAQ indicated to the Commission that, apart from the technical problems, there remained the issue of the legality of establishing a single post adjustment for Geneva.[k] The Commission noted that, in principle, it was possible to establish a single post adjustment index even though there were unanticipated technical problems and that it would report the matter to the Assembly.[l]

Pursuant to resolution 51/216

21. In section I.E of its resolution 51/216, the General Assembly reiterated its request to the Commission urgently to complete its study regarding the methodology for establishing a single post adjustment index for Geneva, and to complete the study and implement the single post adjustment at the earliest date, and no later than 1 January 1998.

22. ACPAQ considered a report by a consulting firm on establishing a single post adjustment index for Geneva, even in the face of non-participation in price surveys by staff living in France. ACPAQ continued its work on developing an

index and presented its recommendations on a methodology to the Commission at its forty-fifth session.

23. The Commission, at its forty-fifth session, decided that the views of the organizations and staff in Geneva would be sent to the Legal Counsel of the United Nations for his opinion in the light of the following alternative courses of action:

(a) A single post adjustment index based on prices in Geneva and the border areas of France;

(b) Two separate post adjustment indices, i.e., one based on Geneva prices and the other based on prices in the border areas of France;

(c) Other options that could be presented to the Assembly.

24. Consultations were held with the Geneva-based organizations between 11 and 13 June 1997 (no staff participated) and a document entitled "Notes on the consultations on the Geneva post adjustment by the Chairman of the Advisory Committee on Post Adjustment Questions", which were "accepted by all participants as representing, in general, the views presented" (see annex VII) was supplied to the Legal Counsel. Written comments were received by the Commission from the legal counsels/legal advisers of ILO, ITU, WHO, WIPO and WMO, and the Legal Counsel of the United Nations received directly a submission from the Director of Personnel of UNHCR (see annexes VIII-XIII).

Notes

[a] ICSC supplied to the Office of Legal Affairs a 1997 table indicating that 29.7 per cent of United Nations staff live in France.

[b] _Official Records of the General Assembly, Fiftieth Session, Supplement No. 30_ (A/50/30), annex XIV.

[c] Ibid., _Supplement No. 30_ (A/50/30), paras., 298-319.

[d] Ibid., _Supplement No. 30_ (A/50/30), annex XV.

[e] Ibid., _Supplement No. 30_ (A/50/30), para. 303.

[f] Ibid., paras. 304-307.

[g] Ibid., para. 311.

[h] Ibid., para. 314.

[i] Ibid., para. 317.

[j] Ibid., para. 319.

[k] Ibid., _Fifty-first Session, Supplement No. 30_ (A/51/30), para. 190.

[l] Ibid., para. 194.

Annex XV

THE FLEMMING PRINCIPLE: HISTORICAL PERSPECTIVE

1946-1948

1. Following the establishment of the Headquarters of the United Nations in New York in February 1946, the General Assembly adopted provisional staff regulation 16, proposed jointly by the Preparatory Commission and the Advisory Group, as part of resolution 13 (I). That regulation states:

> "Pending the adoption of a permanent classification plan, the salaries of the members of the staff other than Assistant Secretaries-General and Directors shall be determined by the Secretary-General within a range between the salary adopted by the General Assembly for the post of Director and the best salaries and wages paid for stenographic, clerical and manual work at the seat of the United Nations."

2. In November 1946 a 19-grade structure for all posts other than those of the manual workers was designed for New York. Under the single structure, the messengers, telephone operators, security guards, secretarial and clerical staff, and other personnel whose posts involved essentially clerical and routine administrative duties, were classified in levels up to the grade 9-10 level. The posts were to a large extent, but not exclusively, those normally subject to local recruitment, and the salary rates applicable to them were based on the average salaries actually received by comparable employees in commercial firms paying the "best" average rates in the New York area.

1949-1951

3. The General Service category was introduced in 1951 on the recommendation of the Committee of Experts on Salary, Allowance and Leave Systems (familiarly known as the Flemming Committee), which met in 1949. The Committee recommended that the "single ladder" system be replaced by a grouping of posts into separate categories, each category having (a) a more or less homogeneous group of posts covering jobs of the same general character in terms of duties, responsibilities, authority involved, qualifications required, and other recruitment criteria; and (b) a salary scale that broadly defined the maximum and minimum expectation of those serving in it so long as they remained in the category. The General Service category comprised staff mainly recruited locally and assigned to posts that involve essentially clerical, secretarial, custodial and administrative duties.

4. The Flemming Committee recommended, and the General Assembly adopted, the principle that the General Service salary scales should be established according to the best prevailing rates in the local market. This principle followed from the requirement that General Service staff should be recruited primarily from within the local labour market and the requirement under the Charter of the United Nations that the conditions of service should be such as to enable the United Nations to recruit and retain staff of the highest competence, efficiency and integrity. The Committee recommended:

> "Salaries and wages for locally engaged staff should be fixed and paid in local currency and should be sufficiently high to recruit and retain staff of high quality and standing. This means that, generally speaking, a local salary and wage scale should be equivalent to the 'best' prevailing local rates, corresponding to the situation at Headquarters. Particular

> account should be taken of rates paid by governmental or public authorities in the area where such authorities themselves use the formula of best prevailing rates. In this connection the Committee believes that, in certain areas, the necessity should be recognized of having regard to salaries paid by the embassies, consulates and other non-national employers, where such employers have local staff approximating in number the local staff of the international organization concerned. An essential factor to bear in mind is that the prestige of the Organization and the need for meeting competition in the recruitment of well-qualified staff precludes in many instances the basing of its local salary scale on even the best prevailing rates in local commercial establishments. Apart from this consideration, other situations may exist where it will be necessary to fix rates somewhat above the best prevailing local rates, for instance, where the demand for certain categories of staff exceeds the available supply or where other conditions of service offered by outside employers make it difficult for international organizations to attract necessary staff (e.g., where such employers are able to give at the same time long tenure or more attractive benefits)."[a]

5. Upon the recommendation of the Flemming Committee, the General Assembly decided in 1950 that the Secretary-General should fix the salary scales for staff members in the General Service category and the salary or wage rates for manual workers, normally on the basis of the best prevailing conditions of employment in the locality of the United Nations office concerned (resolution 470 (V), annex I).

1952-1963

6. The Consultative Committee on Administrative Questions (CCAQ) accepted at its thirteenth session (September 1952) for the guidance of its members a set of guiding principles and procedures for the establishment of local salary schedules. Those principles governed the salary determination process for General Service staff from 1952 until the first salary survey conducted by the International Civil Service Commission (ICSC) in 1977.

7. In 1956, the Salary Review Committee endorsed the basic principle but suggested:

> "The organizations should make comparisons of the total pay and benefits of employees in circumstances as nearly comparable as possible. Care should be taken to avoid rates of pay which are exceptionally given to non-typical employees in particular concerns. At offices like Geneva, where large numbers of General Service staff are employed, particular attention should be paid to both scales of pay and hiring rates in large outside organizations. Similarly, where Governments or other intergovernmental organizations base their own rates of pay on the principle of 'best prevailing conditions of employment', or something like it, their scales might be valuable guides; on the other hand, if small businesses with only a few employees pay substantially more than the government rates, they should tend to be discounted. In countries where prevailing rates are so low that employees in general often have to seek a 'second job' to make ends meet, the organizations would be justified, in the Committee's view, in making comparisons with the total earnings received, having some regard, of course, to differences in hours worked."[b]

As a result, the formulation of the principle was changed from "best prevailing rates" to "best prevailing conditions of employment". The General Assembly and other legislative bodies accepted this principle and all organizations in the common system applied it.

8. Over the years the principle lent itself to varying interpretations and modes of practical application. It enabled the organizations to meet their needs in a variety of economic and social situations at the locations where General Service staff were employed but led also to considerable difficulties at some duty stations. Divergencies of practices resulted in regard to such basic items as the structure of the General Service category, the salary levels and the salary adjustment procedures, despite general agreement among the organizations that a harmonization of practices was desirable.[c]

1964

9. To harmonize practices, CCAQ at its twenty-fifth session (April 1964) revised and developed the rules already laid down and defined "best prevailing rates" as "the average rates paid for comparable work by a reasonable sample of the best paying employers in the locality" who, for the purpose of the survey, "were those who offered, comparatively, the best conditions of employment in terms of salary rates, conditions of work, leave and social security benefits, security of tenure, prospects of promotion, etc.".

10. At its thirty-seventh session (April 1964), the Administrative Committee on Coordination (ACC) adopted the CCAQ document entitled "Application of the guiding principles for the determination or revision of conditions of service of staff in the General Service category". The purpose and intention of the guidelines were to recognize both the need for flexibility in applying the principle and to ensure consistent and equitable practices at all duty stations. The ACC paper on guiding principles pointed out that, in practice, the legislative bodies of the organizations had agreed that the conditions of service of locally recruited staff should be based on the "best prevailing conditions among other employers in the locality" and that "in other words, the organizations will be among the best employers in the locality, but will not necessarily be the absolute best". Paragraph 11 of the paper adds, "these should be the employers whose conditions of employment in terms of salary rates, conditions of work, leave and social security benefits, security of tenure, prospects of promotion, etc. are reputed to be representative of the best prevailing standards in the locality".[d]

1965

11. In 1965, the International Civil Service Advisory Board (ICSAB) specified the way in which the "best prevailing conditions" should be interpreted: they should be understood as those in force among the best employers, but not necessarily the absolute best. The assessment of the best prevailing conditions should be made on a global basis. "Best" should be taken to mean "best as a whole", and not the selection of the "best" elements from a variety of firms. All measurable factors, such as wages, bonuses, grants, allowances, and social security provisions should be evaluated.[d] ICSAB also reviewed and amended the guiding principles for the establishment of General Service salaries drawn up by CCAQ and approved by ACC.

1966-1970

12. Difficulties and disagreements over the interpretation and application of the guidelines themselves increased. This led the organizations to seek the advice of ICSAB on a number of occasions. In May 1970, the organizations informed ICSAB that the General Service salary scales for similar jobs in the seven headquarters cities "appear to be at variance with what is known about salary levels in the countries concerned ... It is difficult to avoid the conclusion that the guidelines permit different duty stations to have widely different interpretations of the term 'best prevailing rates' ... Existing methods have at some duty stations succeeded in temporarily minimizing dissension with the staff. The value of this should not be underestimated, and were there an assurance that harmony would continue to prevail, it might be reason for leaving things as they are. Unfortunately, the methods by which dissension is ended at one duty station can cause difficulty at other duty stations". The organizations further stated that "in some duty stations the rate of increase in General Service salaries is so much greater than the rate of increase in Professional salaries that, in five years or so, the extent of overlap between the two categories may cause problems". The organizations concluded that "the efforts to improve the system must be pursued".[e]

13. The General Assembly, in its resolution 2743 (XXV), noted that the system of establishing salaries for the General Service category had also given rise to considerable difficulties and concern and decided to establish the Special Committee for the Review of the United Nations Salary System. The Assembly requested the Special Committee to include in the review the principles which should govern the establishment of the salary scales and other conditions of service for the various categories.

1971-1974

14. In pursuance of its mandate, the Special Committee, which met in 1971 and 1972, reviewed the guidelines and the problems and results that had arisen from their application in the seven headquarters stations. The Committee believed that the existing principle of "best prevailing conditions of employment in the locality" remained valid and recommended its retention, if only because (a) fair comparison with remuneration of equivalent jobs was a widely accepted method of determining salary scales and conditions of service; and (b) the United Nations, as an employer, must have regard for the practices of the labour market in the host country.[f]

15. The Special Committee noted that there was an ambiguity inherent in the formulation "best prevailing" rates which had complicated the application of the principle and had led to disparities in the salary structures at the headquarters duty stations, pointing to defects of method and, sometimes, resulting in levels of pay higher than necessary. From the formulation it is not clear whether the emphasis should be on the word "best" or the word "prevailing". The organizations attempted, in practice, to follow the interpretation given in the guidelines, namely, that the organizations "will be among the best employers in the locality but will not necessarily be the absolute best", while the staff tended to place the emphasis on "best" and tended to compare their salaries with the one or two best employers in the locality. The latter rates could be indicative of the "best" rates in the community while not being a measure of the "prevailing" rates in the community.

16. The Committee proposed a reformulation of the principle, reading "The remuneration and conditions of service of locally recruited staff in the General

Service category should compare favourably with those of outside local staff employed in broadly comparable work".[9] One Government had favoured linking General Service salaries to the "comparatively best salaries paid to national public servants, which could be appropriately increased". The Committee concluded that the use of the local public services as the prime comparator would substitute new difficulties for the existing ones. Nevertheless, given the similarity between national and international civil services in regard to some elements of remuneration, national services should be included among the employers surveyed.

17. The Special Committee also recommended that, in those countries where reliable statistical data on outside employment were not available, the existing practice of surveying outside employers, normally 25 to 30 (including the local national services), which should form a semi-permanent group for pay comparison purposes, should be continued. Rates paid by those employers for 10 to 15 jobs should be assembled. To ensure that the United Nations rates would compare favourably, the 75th percentile should continue to be used as the outside matching point for each job. The inside matching point should be determined in accordance with the relationship of the outside job to the United Nations grade level and the relationship of the 75th percentile rate to the minimum and maximum rates for the outside job. The Committee also recommended the establishment of an intergovernmental civil service commission.

1975-1992

18. In 1976, at its third (February/March) and fourth (July/August) sessions, the newly established International Civil Service Commission continued its review of the salary system and took up the issue of the methodology for determining the best prevailing conditions. ICSC concluded that because it had not yet examined the problems which arose in the application of the principle it was not in a position to express judgement on the principle itself. It therefore decided to examine the question in detail in 1977 in pursuance of its functions under article 12 of its statute and reserved the possibility of submitting later recommendations to the General Assembly about the broad principle. ICSC maintained that the allowances and other entitlements of the General Service category (which were part of the remuneration) should continue to be established by comparison with local conditions at each duty station. ICSC would therefore define the methods for application of that principle, in conjunction with those for salaries, under article 11 of its statute, and would consider and determine the rates of General Service allowances at particular duty stations when it recommended General Service salary scales at those duty stations, under article 12 of its statute.[h]

19. The Commission, at its fifth session (February/March 1977), inquired whether the principle of "best prevailing conditions" remained valid and whether the organizations could not obtain staff they required by offering conditions not necessarily comparable with those of the best employers. In particular, it considered whether the conditions offered by the local public service in each country would not be adequate, in other words, something like a country-by-country application of the Noblemaire principle. ICSC was provided with information on the existing relationship between General Service salaries and local public service salaries in certain headquarters countries and noted that there were wide variations between the margins existing, for example, in New York, Geneva and Paris. Such variations were likely to be even more marked if the comparisons were made in other, non-headquarters, countries. It concluded that there was no uniform relationship between public service salaries and those of other employers (whether the best or the average) in each country. ICSC

further concluded that, while the principle of comparison with local public service salaries might prove satisfactory at some duty stations, it might not be satisfactory in others. To take local public service salaries as the base and to add to them a margin, the proportion of which would have to vary from place to place, according to the relationship of local public service rates to those offered by other employers in the locality, would avoid none of the disadvantages of comparison with best prevailing conditions and might be open to other objections. The Commission therefore concluded that a comparison based solely on local public rates was not feasible as a general principle applicable to all duty stations. Pending possible further examination of the principle in the light of the experience it would acquire in various duty stations, ICSC saw no alternative to comparison with best prevailing conditions. Meanwhile that principle remained in force until the General Assembly might amend it.[i]

20. ICSC considered the general principle and methodology for establishing the conditions of service of the General Service category according to the following plan:

(a) The basic principle, that is, whether General Service remuneration should continue to be established in relation to local conditions or by some other criterion;

(b) If local conditions continued to be the basis, which local conditions should be used (best prevailing, or some other);

(c) The methodology for determining local conditions;

(d) The translation of the data obtained concerning local conditions into internal salary scales;

(e) The other benefits and allowances of the General Service category.[j]

21. Basic principle. ICSC noted that since 1946 the General Assembly had adopted the principle that General Service salaries should be established by reference to local conditions, at first in New York and subsequently at each other duty station. It considered the possibility of an international scale, similar to the Noblemaire principle for the Professional category, or regional scales, but observed that in either case the scale which was adequate for the country with the highest salary would be too high for other countries. In order to correct a single standard scale to take into account differences between national levels, it would be necessary to establish a system of adjustments similar to but distinct from the post adjustment index used for Professional salaries, which would be prohibitively complicated. ICSC therefore concluded that there was no feasible alternative to the determination of salaries of the General Service category by reference to local conditions at each duty station.[k]

22. Which local conditions should be used. ICSC noted that the principle of comparison with "best prevailing" local conditions had been enunciated in 1949 by the Flemming Committee and confirmed in its essence by all subsequent review bodies. Its rationale was that the organizations, in order to obtain staff of the standard required, should be able to compete with other employers of staff of equivalent qualifications, that is, those offering the best prevailing conditions of employment in the locality. ICSC noted also that the earlier formulation "best prevailing rates" had been replaced by "best prevailing conditions", which implied that the comparison should rest not only on the rates of pay but, more broadly, on all other conditions of employment, such as

security of tenure, promotion prospects, retirement and health insurance schemes and fringe benefits.[l]

23. The methodology for determining local conditions. ICSC noted that the 1965 guiding principles provided for three different methods:

(a) For large cities where there were reliable published data on outside salaries (e.g., New York), those data might be used, supplemented by spot checks of rates paid in key jobs by a small number of reputedly good employers;

(b) For other large cities where there were no published data (e.g., Geneva, Paris, Rome), surveys should be made, either of the whole labour market, using statistical sampling techniques, or of a fairly large number of outside firms reputed to be among the best employers;

(c) For cities where there were smaller numbers of United Nations staff (e.g., field duty stations), limited surveys should be made or use made of the results of surveys made by other employers.

24. ICSC concluded that, while the methodology it established should be sufficiently precise to ensure that the best information was obtained, some flexibility for adaptation to local circumstances was desirable.[m]

25. ICSC noted that, henceforth, whichever of the methods for ascertaining best prevailing local conditions was adopted in a particular case, ICSC itself was responsible for deciding on the method and the details of its application and for analysing the results, drawing conclusions from them and recommending a salary scale in every duty station for which it assumed responsibility under article 12 of its statute. When a survey was to be made to collect data, that survey would necessarily be made under the responsibility of ICSC.[n] Three possible ways of collecting data were considered: by the Commission's own secretariat; by a firm of consultants working on behalf of ICSC; or by the organization(s) in the duty station acting on behalf of ICSC under article 27 of the statute. The representatives of the organizations informed ICSC that their preference varied according to the duty station considered. ICSC concluded that whatever method was chosen should satisfy accepted statistical principles of validity to achieve the desired result of indicating conditions which were representative of "best prevailing conditions". Changes in method from one survey to another should be avoided as far as possible, although ICSC, in assuming its responsibilities for surveys, could obviously not be bound by the practices adopted hitherto by other bodies.[o] ICSC also considered the question whether local public services should always be included among the employers to be surveyed. ICSC agreed that, provided satisfactory job matches could be found, the conditions of employment of the local public services should in any case be surveyed. If they were found to be among the best, they would automatically be included in the analysis of the result. If they were found to be not comparable to those of the good employers surveyed, to include them nevertheless would constitute a change in the principle of best prevailing conditions; ICSC could therefore not include them as long as that principle remained in effect but might reconsider the question when it re-examined the basic principle.[p]

26. At its sixteenth session (July 1982), ICSC approved the general methodology for headquarters duty stations and endorsed the updated version of the principle, which is as follows:

> "It is stated under Article 101 of the Charter of the United Nations that the paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence and integrity. To comply with the standards established by the Charter as regards the employment of locally recruited staff, the organizations of the United Nations system must be competitive with those employers in the same labour market who recruit staff of equally high calibre and qualifications for work which is similar in nature and equal in value to that of the organizations. Remaining competitive in order both to attract and retain staff of the [required] high standards requires that the conditions of service for the locally recruited staff be determined by reference to the best prevailing conditions of service among other employers in the locality. The conditions of service, including both paid remuneration and other basic elements of compensation, are to be among the best in the locality, without being the absolute best."[q]

27. In 1984, at its nineteenth (March) and twentieth (July) sessions, ICSC considered and approved a general methodology for surveys of best prevailing conditions of service at non-headquarters duty stations. In its resolution 39/69, the General Assembly noted that ICSC had approved a methodology for surveys of best prevailing conditions of service for locally recruited staff at non-headquarters duty stations which was to be applied from 1985 onwards.

28. At its thirty-sixth session (August 1992), ICSC noted that the Flemming principle used as a basis for determining the conditions of service for locally recruited General Service staff and the manner of its interpretation had been the subject of several reviews since its adoption by the General Assembly in 1949. The conditions of service of staff in the General Service and related categories had been based on best prevailing conditions of employment in a given locality. Various efforts to define that principle further had not necessarily resulted in greater clarity. ICSC observed that the principle had evolved from "best prevailing rates" to "best prevailing conditions". In view of that evolution, the survey process allowed for the consideration of the conditions in a broader context. ICSC felt that comparisons of such conditions should not be limited to salaries and allowances, but should encompass best prevailing overall conditions of employment of comparable employers. ICSC noted the importance of focusing on all aspects of the Flemming principle, which called for consideration of best prevailing practices. Both the "best" and the "prevailing" aspects of the principle should be borne equally in mind when applying the principle.[r] ICSC reaffirmed the Flemming principle, as enunciated at its fifteenth session in 1982.

29. In its resolution 47/216 of 23 December 1992, section III, paragraph 1, the General Assembly endorsed the reaffirmation by ICSC of the Flemming principle as enunciated at its fifteenth session as the basis for the determination of conditions of service of the General Service and related categories.

Notes

[q] Report of the Committee of Experts on Salary, Allowance and Leave Systems (Official Records of the General Assembly, Fourth Session, Fifth Committee, annex, agenda item 39, document A/C.5/331 and Corr.1), para. 71.

[b] United Nations salary, allowance and benefits system: report of the Salary Review Committee (Official Records of the General Assembly, Eleventh Session, Annexes, agenda item 51, document A/3209), para. 102.

[c] Report of the Special Committee for the Review of the United Nations Salary System (Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 28 (A/8728), vol. I), para. 195.

[d] International Civil Service Advisory Board, Report of the Special Panel on the determination or revision of conditions of service of staff in the General Service category (ICSAB/XIII/R.1, annex A), 10 August 1964.

[e] Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 28 (A/8728), vol. I, para. 197.

[f] Ibid., para. 262.

[g] Ibid., para. 264.

[h] Ibid., Thirty-first Session, Supplement No. 30 (A/31/30), paras. 82 and 83.

[i] Ibid., Thirty-second Session, Supplement No. 30 (A/32/30), paras. 77 and 78.

[j] Ibid., para. 72.

[k] Ibid., para. 75.

[l] Ibid., para. 76.

[m] Ibid., paras. 80 and 83.

[n] Ibid., para. 84.

[o] Ibid., paras. 86 and 87.

[p] Ibid., paras. 90 and 91.

[q] Ibid., Thirty-seventh Session, Supplement No. 30 (A/37/30), annex II, para. 3.

[r] Ibid., Forty-seventh Session, Supplement No. 30 (A/47/30), para. 218.

Annex XVI

ECONOMIC SECTOR REPRESENTATION IN GENERAL SERVICE SURVEYS

A. Public/non-profit

1. Public administration (including national civil service and embassies)

2. International and non-governmental organizations

3. Parastatal enterprises

4. Educational institutions

5. Miscellaneous

B. Private

1. Finance, insurance, real estate and business activities (including banks, life/health insurance carriers, stock brokerage firms, travel agencies)

2. Manufacturing (local enterprises that make/fabricate a product) including:

   (a) Printing/publishing

   (b) Petroleum refineries

   (c) Consumer products

   (d) Tobacco/food products

   (e) Pharmaceutical products

   (f) Petrochemical products

3. Transport, storage and communication (including telecommunication, airlines, television/radio stations, railroads, etc.)

4. Wholesale and retail trade (local enterprises that market/sell products directly to final user or for resale)

5. Miscellaneous

Note: Where any of the segments shown under "private" would be under government control or in which the national government would be a major stockholder and be the main determining force for establishing conditions of service, the employer should be considered under "parastatal".

Annex XVII

CASH ELEMENTS OF REMUNERATION WHICH SHOULD BE CONSIDERED PENSIONABLE

Pensionable remuneration elements

Additional month's salary

Profit-sharing payments (excluding schemes which provide supplemental retirement income)

Housing-related allowances

Performance payments

Bonuses

Food-related allowances

Cost-of-living allowance

All other cash remuneration elements should be considered non-pensionable, such as, but not limited to, allowances related to meals, transport, leave, apparel, recreation and representation.

Annex XVIII

METHODOLOGY TO DETERMINE THE LEVEL OF THE EDUCATION GRANT

1. The level of the education grant should be reviewed biennially.

2. Data should be collected biennially on:

(a) Costs at all levels of education;

(b) Tuition fees and other major elements of allowable expenditure at "representative" schools (that is, schools attended by the international community) at all locations/currency areas for which a distinct amount has been established. Such information should be collected in respect of the secondary level only.

3. Periodic checks of "representative" schools should be conducted every four to six years.

4. The following are the currency areas under which the allowance should be administered:

(a) Austrian schilling;

(b) Belgian franc;

(c) Danish krone;

(d) Deutsche mark;

(e) Finnish markka;

(f) French franc;

(g) Irish pound;

(h) Italian lira;

(i) Japanese yen;

(j) Luxembourg franc;

(k) Netherlands guilder;

(l) Norwegian krone;

(m) Pound sterling;

(n) Spanish peseta;

(o) Swedish krona;

(p) Swiss franc;

(q) United States dollar for expenses incurred in educational institutions in the United States of America;

(r) United States dollar for expenses incurred in United States dollars outside the United States or in other currencies that have been converted to dollars.

5. The existing levels of the education grant ceiling should serve as the basis for adjustment. Adjustments should be on a differentiated basis by currency area. Data on actual expenditure and price data should be used for trigger points (percentage of cases exceeding the overall ceiling). Any adjustments should be made on the basis of movement of costs and fees:

(a) Costs. At the larger currency areas (100 or more claims) the trigger point should be 5 per cent of total cases at all levels of education. At the smaller currency areas the trigger point should be five cases of the total number of cases reported at all levels of education;

(b) Fee index. Actual movement of school fees (average of representative schools) in the period since the last review, taking into account fees for the forthcoming academic year, subject to a minimum threshold of 5 per cent.

6. Fifty per cent of representative cases at all levels of education should be reported by every organization.

7. Boarding element:

(a) Adjustments of the flat rates for boarding should be based on the movement of the relevant consumer price indices for the currency areas;

(b) The additional flat rates for boarding, which should be 150 per cent of the normal flat rates, should be adjusted on the same date and by the same percentages as the normal flat rates.

Annex XIX

SUMMARY OF UNITED NATIONS AND UNITED NATIONS DEVELOPMENT PROGRAMME APPOINTMENTS OF LIMITED DURATION SCHEMES

Conditions of service	United Nations	United Nations Development Programme
Contractual arrangements	Contracts issued for six months at a time; salary and service allowance adjusted at time of contract renewal (mission subsistence allowance is adjusted at time of review (may be at any time)). Maximum duration of employment: three years, exceptionally four.	Contracts issued for up to one year at a time; no adjustment to emoluments during period of contract (except for locally recruited staff in field). Maximum duration of employment: three years, exceptionally four.
Salary	Levels P-1 to USG salary rates represent step I (single rate) of the base/floor salary scale. Field Service and internationally recruited General Service staff: step I of the Field Service scale (single rate). Local staff: step I of the local salary scale (single rate).	Four salary bands (with quartiles): (Base salary is set at the minimum of the band to which is added an amount representing the quartile, if above the minimum.) A-1: G-6 and G-7 (derived from range from first step of G-6 to the top step of G-7) A-2: Derived from range between bottom step of P-2 and highest of P-3 (S) A-3: Ditto P-4 and P-5 A-4: Ditto D-1 and D-2. (Similar band approach being applied to locally recruited levels). Note. Initial pay levels are adjusted in the event of contract extension, on the basis of performance evaluation (3-5 per cent on average; 7 per cent maximum).
Post adjustment	No mission subsistence allowance is payable.	Percentage added in, representing applicable post adjustment for duty station.

<table>
<tr><th>Conditions of service</th><th>United Nations</th><th>United Nations Development Programme</th></tr>
<tr><td>Hardship</td><td>May be included in the mission subsistence allowance, as appropriate.</td><td>Percentage added in, representing hardship level payable at the duty station.</td></tr>
<tr><td>Other allowances (dependency, education grant)</td><td>Subsumed within a service allowance which is a percentage of the step I(S) salary levels for the grade in question.
For internationally recruited staff, the levels are:
A = 7 per cent; B = 14 per cent;
C = 21 per cent; D = 28 per cent;
E = 35 per cent.
For local staff, they are: A = 0; B = 7 per cent;
C = 14 per cent; D = 21 per cent.</td><td>Subsumed within a rubric of "special considerations", which may total up to 40 per cent of the base pay amount, but in practice is generally less than 15-20 per cent. This element breaks down as follows:
Percentage
Special family considerations 0 - 20
Unique or highly special features of assignment 0 - 15
Unique or highly special qualifications of the individual 0 - 15</td></tr>
<tr><td>Housing</td><td>Included in the mission subsistence allowance rate.</td><td>Included in salary.</td></tr>
<tr><td>Leave (annual)</td><td>30 days.</td><td>18 days at Headquarters and for locally recruited staff;
30 days for international staff in field.</td></tr>
<tr><td>Maternity leave</td><td colspan="2">Yes</td></tr>
<tr><td>Sick leave</td><td colspan="2">Yes</td></tr>
<tr><td>Medical insurance</td><td colspan="2">Contributory, for staff member only</td></tr>
<tr><td>Pension Fund membership</td><td colspan="2">Yes</td></tr>
<tr><td>Termination indemnity</td><td>No, unless such payment is specified in the letter of appointment.</td><td>Payable if UNDP "unilaterally decides to foreshorten the contract".</td></tr>
</table>

Annex XX

PRINCIPLES AND GUIDELINES FOR EMPLOYMENT OF APPOINTMENTS OF LIMITED DURATION

Principles

(a) In the recruitment of staff under appointments of limited duration, the highest standards of efficiency, competence and integrity should be the paramount consideration as for other staff;

(b) The independence and international character of the international civil service should be preserved;

(c) Appointments of limited duration do not carry any expectancy of automatic conversion to any other type of appointment;

(d) Appointments of limited duration should not be used abusively to extend the employment of staff;

(e) Appointments of limited duration employment should not be at the expense of the core international civil service;

(f) Due regard should be paid to the importance of recruiting the staff on as wide a geographical basis as possible;

(g) Organizations' policy imperatives in the area of gender balance should not be compromised;

(h) There should be a reasonable correlation with the conditions of service of other groups of staff;

(i) Compatibility with job classification principles should be observed (equal pay for equal work);

(j) Appointments of limited duration employment arrangements should not create competition for staff among organizations;

(k) Appointments of limited duration arrangements should support the concept of the United Nations system as a good employer: hence they should incorporate adequate social security coverage;

(l) These arrangements should be developed with staff consultation and should be characterized by transparency and feedback.

Guidelines

(a) Appointments of limited duration staff members will pledge themselves to discharge their functions and to regulate their conduct with the interests of the [United Nations] only in view. They shall neither seek nor accept instructions from any Government or from any other authorities external to the organization. They will be bound in their conduct by the obligations pertaining to the staff members of the United Nations and the specialized agencies;

(b) Appointments of limited duration staff will have the status of "Official" in terms of the Convention on the Privileges and Immunities of the United Nations and the conventions of the specialized agencies;

(c) Salary is established as one lump sum amount. This amount is determined within a range or band corresponding to the net base salaries (gross base salary minus staff assessment) at current grades or groups of grades. Additions to this base take into account, inter alia, a number of allowances and benefits applicable to regular staff, which are incorporated in the lump sum remuneration;

(d) Annual leave will be granted in accordance with organizations' provisions for short-term staff;

(e) Sick leave will be granted in accordance with organizations' provisions for short-term staff. Appointments of limited duration staff are eligible for maternity leave;

(f) Appointments of limited duration staff will be covered against service-incurred illness, injury or death;

(g) Appointments of limited duration staff will be insured by organizations against ill-health and, where appropriate, war-risk;

(h) Travel entitlements and installation costs will be paid in a lump sum on the basis of requirements (including family considerations, etc.);

(i) Appointments of limited duration staff are eligible for medical and security evacuation like other staff;

(j) Appointments of limited duration staff are entitled to the right to appeal administrative decisions following the same procedures for other staff members;

(k) Appropriate medical clearance is to be obtained before recruitment and dispatch of a staff member under appointments of limited duration;

(l) Appointments of limited duration staff will receive the same termination indemnities as those payable to short-term staff.

Annex XXI

OVERVIEW OF TRAVEL STANDARDS OF ORGANIZATIONS/PROGRAMMES OF THE COMMON SYSTEM

Organization	Base class for international travel	Time threshold for upgrade (class)	Rank threshold for upgrade (class)	Stopover criteria/restriction	Supplemental daily subsistence allowance
United Nations	Economy	Nine hours (business)	Assistant Secretary-General and Under-Secretary-General (business)	More than 10 hours and less than 16 hours: one stopover or 24 hours rest More than 16 hours: two stopovers or one stopover and 24 hours rest	D-1 and D-2: plus 15 per cent Under-Secretary-General/ Assistant Secretary-General: plus 40 per cent
FAO	Economy	Nine hours (business)	Deputy Director-General and Assistant Director-General (business)	More than 10 hours and less than 18 hours: one stopover or 24 hours rest More than 18 hours: two stopovers or one stopover and 24 hours rest	D-1 and D-2: plus 15 per cent Deputy Director-General and Assistant Director-General: plus 40 per cent and $2.50 Director-General: plus 40 per cent and $8
IAEA	Economy	Seven hours (business)	Assistant Director-General and above (first)	No stopovers allowed	D-1 and D-2: plus 15 per cent Assistant Director-General/ Deputy Director-General: plus 40 per cent
ICAO	Economy	Nine hours (business)	Secretary-General and President (first)	More than 10 hours and less than 16 hours: one stopover or 24 hours rest More than 16 hours: two stopovers or one stopover and 24 hours rest	Principal Officer; Deputy Director and Director: plus 15 per cent Secretary-General: plus 40 per cent President: plus 40 per cent

Organization	Base class for international travel	Time threshold for upgrade (class)	Rank threshold for upgrade (class)	Stopover criteria/restriction	Supplemental daily subsistence allowance
IFAD	Economy	Two and one-half hours (business)	President (first)	More than 10 hours and less than 18 hours: one stopover More than 18 hours: two stopovers	D-1: plus 15 per cent Assistant President: plus 40 per cent Vice-President: plus 40 per cent and $2.50 President: plus 40 per cent and $8
ILO	Economy	Seven hours (business)	Director-General (first)	More than 12 hours: one stopover (in practice rule is never applied)	D-1 and D-2: plus 15 per cent Assistant Director-General/ Deputy Director-General: plus 40 per cent
IMO	Business (travel to New York is economy)	Not applicable	Secretary-General (first)	More than 10 hours and less than 16 hours: one stopover or 24 hours rest More than 16 hours: two stopovers or one stopover and 24 hours rest	D-1 and D-2: plus 15 per cent Secretary-General: plus 40 per cent
ITU	Economy	Five hours (business) No stopovers or rest periods allowed	Elected officials (first) Within Europe (business)	More than 10 hours and less than 16 hours: one stopover More than 16 hours: two stopovers	D-1: plus 15 per cent Elected officials: plus 40 per cent
UNESCO	Economy	Eight hours (business) Duration of mission is at maximum 3 days excluding the day of arrival at and the day of departure from the place of the mission	Director-General (first) Deputy Director-General and Assistant Director-General (business)	More than 10 hours and less than 16 hours: one stopover or 24 hours rest More than 16 hours: two stopovers or one stopover and 24 hours rest (not applicable for business class)	D-1 and D-2: plus 15 per cent Assistant Director-General and Deputy Director-General: plus 40 per cent Director-General: plus 40 per cent and $5 per day

Organization	Base class for international travel	Time threshold for upgrade (class)	Rank threshold for upgrade (class)	Stopover criteria/restriction	Supplemental daily subsistence allowance
UNHCR	Economy	Nine hours (business)	Assistant Secretary-General (business)	More than 10 hours and less than 16 hours: one stopover More than 16 hours: two stopovers	D-1 and D-2: plus 15 per cent Assistant Secretary-General and Under-Secretary-General: plus 40 per cent
UNIDO	Economy	Nine hours (business) (only for technical cooperation projects funded from extrabudgetary resources)	Director-General (first)	More than 10 hours and less than 16 hours: one stopover More than 16 hours: two stopovers or one stopover and 24 hours rest	
UNRWA	Economy	Nine hours (business)	Not applicable	More than nine hours: one stopover	D-1 to Assistant Secretary-General: plus 15 per cent Under-Secretary-General: plus 40 per cent
UPU	Economy	Nine hours (business) (on official business or on appointment or separation from service)	Director-General and Deputy Director-General (first) Assistant Director-General (business)	More than 10 hours and less than 16 hours: one stopover or 24 hours rest More than 16 hours: two stopovers or one stopover and 24 hours rest	D-1 and D-2: plus 15 per cent Deputy Director-General and Under-Secretary-General: plus 40 per cent
WFP	Economy	Nine hours (business)	Assistant Director-General and Executive Director (business)	More than 10 hours and less than 18 hours: one stopover More than 18 hours: two stopovers	D-1: plus 15 per cent Deputy Executive Director: plus 40 per cent Executive Director: plus 40 per cent and $2.50
WHO	Economy	Nine hours (business) No rest stopovers allowed	Director-General and Regional Directors (first)	Stopovers allowed if elect not to travel business class	Since 1995 all staff members are paid the standard per diem rate of 100 per cent

Organization	Base class for international travel	Time threshold for upgrade (class)	Rank threshold for upgrade (class)	Stopover criteria/restriction	Supplemental daily subsistence allowance
WMO	Economy	The travel involves a flight (or a leg) of a duration at least equal to that of a crossing of the North Atlantic. The upgrade is subject to the maximum liability of WMO (full economy class fare). The difference is to be paid by the traveller, if necessary	Secretary-General (first) Deputy Secretary-General and Assistant Secretary-General (first for more than nine hours)	More than 10 hours and less than 16 hours: one stopover More than 16 hours: two stopovers	D-1 and D-2: plus 15 per cent Assistant Secretary-General; Deputy Secretary-General and Secretary-General: plus 40 per cent